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Effects of economic reform policies and foreign debt on the full enjoyment of all human rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, Bernards A. N. Mudho, submitted pursuant to Human Rights Council resolution 5/1.

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Report of the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights

Summary

The present report is submitted in accordance with Commission on Human Rights resolution 2005/19 and Human Rights Council resolution 5/1, which extended the mandate of the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights.

The independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights submits the present report in order to provide the General Assembly with an update on progress in the finalization of the draft guidelines to be followed by both States and public, national and international financial institutions in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief, to ensure compliance with the commitments derived from foreign debt will not undermine the obligations for the realization of fundamental economic, social and cultural rights, as provided for in the international human rights instruments.

As mandated by the Human Rights Council in its decision 2/109, the Office of the High Commissioner for Human Rights organized an expert consultation to seek the views of a variety of stakeholders in order to facilitate the drafting of the final guidelines by the independent expert. This expert consultation took place on 9 and 10 July 2007.

The expert consultation was attended by representatives of United Nations organizations, the Committee on Economic, Social and Cultural Rights, the World Bank, the International Monetary Fund, the World Trade Organization, academics and members of civil society.

The present report reflects the discussions that took place during the expert consultation. It should be noted that all the experts participated in the consultation in their personal capacities and the views expressed did not necessarily reflect the official positions or views of their respective institutions or organizations.

The independent expert will now proceed with reviewing and finalizing the text of the guidelines and their submission to the Human Rights Council in due course.

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I. Introduction

A. Overview

1. The present report is submitted in accordance with Commission on Human Rights resolution 2005/19 and Human Rights Council resolution 5/1, which extended the mandate of the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights.

2. In its resolutions 2004/18 and 2005/19, the Commission on Human Rights requested the independent expert, in the discharge of his mandate, to draft general guidelines to be followed by both States and public, national and international financial institutions (IFIs) in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief, to ensure that compliance with the commitments derived from foreign debt will not undermine the obligations for the realization of fundamental economic, social and cultural rights, as provided for in the international human rights instruments. The Commission further requested the independent expert to present the final draft of such general guidelines to the Commission at its sixty-second session.

3. Pursuant to decision 2/109, the Human Rights Council requested the Office of the High Commissioner for Human Rights (OHCHR) to convene an expert consultation to contribute to the ongoing process of developing the draft guidelines, inviting relevant experts in the areas of human rights, economic reform policies and foreign debt as well as representatives of Member States, relevant United Nations organizations, IFIs and civil society.

4. The expert consultation took place on 9 and 10 July 2007 in Geneva. Taking the outcome of the consultation duly into account, the independent expert will now proceed with the drafting of the final text and will submit the guidelines to the Human Rights Council as requested.

B. Outline of the guidelines

5. As noted in paragraph 2 above, the guidelines are intended to serve as a voluntary policy framework for States as well as national, regional and IFIs to help them take into account human rights obligations, in particular those relevant to economic, social and cultural rights, in their assessments of the implications of debt repayments operations and economic reform policies and their impact on the protection and implementation of these rights.

1. Foreign debt

6. Since the notion of "debt sustainability" has been the basic premise for the consideration of the human rights impact of foreign debt, the notion has featured prominently in the formulation of relevant guidelines. In this context, research and annual consultations with the World Bank and the International Monetary Fund (IMF) revealed that the two Bretton Woods institutions have recently modified their definition of debt sustainability from one of reliance on static indicators to a more forward-looking analytical tool. However, the key objective of even this new understanding of debt sustainability remains ensuring the financial ability to service debt rather than the ability to achieve wider development or human rights objectives.

7. In contrast, the main thrust of the draft guidelines advocates an understanding of debt sustainability whereby a debt situation should be considered unsustainable in human rights terms whenever a country does not have sufficient resources to service its debt and comply with the core minimum standards of human rights at the same time. Thus, whenever a situation arises in which a State cannot service its debts and also meet its core minimum human rights obligations, both creditors and borrowers ought to be obliged to enter into negotiations, to redress the situation, for example, through debt relief, agreement on more favourable debt service terms or a reorientation of financial cooperation towards highly concessional loans and grants.

8. The guidelines, therefore, ideally seek to provide parameters for a clear and unambiguous definition of the required minimum economic, social and cultural human rights standards and objectively measurable quantification of resources needed to achieve this minimum level. At the same time, due cognizance must be taken of the fact that a generalized or universal approach to the notion of debt sustainability would not be applicable in all cases. Consequently, each country will need to assess the availability of its resources and specific priorities, taking due regard of its human rights national plan.

9. Hence, the draft guidelines endeavour to provide policymakers with a tentative operational solution that can be used during the transitional period to full compliance with human rights obligations. In this context, the Millennium Development Goals would seem to be the most accepted framework of economic and social development objectives at the present time. It is, however, necessary to bear in mind that there are significant overlaps between economic, social and cultural rights and the problems targeted by the Goals and the fact that the achievement of the Goals alone does not equate with the full realization of economic, social and cultural rights. However, the Goals are currently the closest operational and internationally recognized reference framework that can be used to assess progress in the implementation of such rights. Consequently, during a transition period, if a country is not able to service its debt and achieve the Goals on time, it is logical that its debt situation should be considered unsustainable.

10. It is acknowledged that additional resources previously destined to service loan repayments and debts that accrue to countries under debt cancellation or debt relief will not automatically guarantee the fulfilment of human rights unless the countries concerned formulate and implement rights-based policies and budget allocations. Therefore, the guidelines suggest that human rights norms and standards be integrated in the national budgeting processes. In the same context, and in a spirit of "shared responsibility" of creditors and borrowers, the guidelines call on creditors to provide technical support assistance, where necessary and requested, to strengthen budgeting processes and the debt management capacity of debtors.

2. Economic reform policies

11. Many economic reform policy elements such as macroeconomic stability, privatization and trade reform can actually help developing countries to comply with human rights obligations. The obligation to "adopt policies and techniques to achieve steady economic, social and cultural development and full and productive employment",[1] which is part of the right to work, is only one example. On the other

[1] International Covenant on Economic, Social and Cultural Rights, art. 6 (2).

hand, there is a strong need to safeguard human rights, particularly of vulnerable groups, during reform processes. As affirmed by the Commission on Human Rights, "the exercise of the basic rights of the people of debtor countries to food, housing, clothing, employment, education, health services and a healthy environment cannot be subordinated to the implementation of structural adjustment policies, growth programmes and economic reforms arising from the debt".[2] The guidelines suggest ways to harmonize both requirements.

12. Traditional economic and social impact studies should be complemented with economic, social and cultural rights impact assessments, taking into account the particular situation of the concerned countries set against their human rights obligations.

13. The draft guidelines identify several standard areas of economic reform policies, such as macroeconomic stabilization, privatization, trade, governance and social sector reform. However, the impact of concrete policy measures in these areas depends largely on each country-specific context; hence, generalized statements on the conformity of these measures with human rights cannot be strictly made, nor are they justifiable. Some examples would include:

(a) A policy targeting very low inflation rates can be harmful to the fulfilment of economic and social rights as it is likely to restrict social spending. However, in a different general economic context the same policy might be conducive to such fulfilment if it preserves real wages and avoids undermining the livelihoods of the poor;

(b) Privatization of State enterprises can in some cases restrict access to basic services. However, even privatized enterprises can ensure availability of basic services to all, as long as a human rights-consistent privatization framework is negotiated with the new private owner and efficiently monitored and enforced by the Government. If the Government has this capacity, privatization can lead to higher output and consequently better availability of services to all;

(c) The impact of any trade liberalization measure in developing countries cannot be generally qualified as constructive or harmful. The outcome depends, among other elements, on sector- or even product-specific decisions regarding the scope and sequencing of trade reform as well as the quality of safeguarding clauses;

14. As a consequence, the draft guidelines are very cautious with regard to concrete and straightforward policy recommendations. Instead, they seek to identify key policy issues that ought to be considered when analysing the human rights impact of reform measures. This is equally the case for a rights-based process of designing economic reform policies. While it is generally recognized that any economic reform should be formulated in a participatory and transparent way, with relevant information made available in a timely manner and with the knowledge of the public, it would not be easy to elaborate specific universal norms regarding such processes.

[2] *Official Records of the Economic and Social Council, 2001, Supplement No. 3* (E/2001/23-E/CN.4/2001/167), chap. II, sect. A, resolution 2001/27, para. 7.

C. Expert consultation

15. The objective of the expert consultation was (a) to provide insights into how foreign debt and debt relief programmes, as well as different kinds of economic reform policies, impact on the capacity of States to comply with human rights standards; and (b) to identify suggestions for useful recommendations to States, international organizations and other stakeholders regarding possible policy elements to promote and protect human rights in developing countries while implementing debt and economic reform programmes. The agenda of the consultation is contained in annex I.

16. The next section of the report summarizes the discussion of the experts, who participated in the consultation in their personal capacity.

17. The consultation took place over two days, with experts from the Committee on Economic, Social and Cultural Rights, the United Nations Population Fund (UNFPA), the Food and Agriculture Organization of the United Nations (FAO), the World Bank, the International Monetary Fund (IMF), the World Trade Organization (WTO), as well as academics and civil society representatives. The full list of participants is contained in annex II.

18. The first day's discussions focused on selected debt and economic reform policy elements and their consistency with human rights principles. Experts used the consultation forum to hear and share different perspectives from peers from IFIs, academia and non-governmental organizations on their views on economic, social and cultural rights and minimum standards, debt sustainability, trade and macroeconomic stabilization, privatization and social sectors.

19. The second day's discussions sought to consolidate the review of policy impacts based on the discussions of the first day and consider them in terms of obligations of human rights duty-bearers and other stakeholders in the debt and economic reform process.

II. General remarks on objectives, content and process

20. A common thread in their general observations was the stress placed by many of the experts on the fact that the guidelines focused on human rights and not on sound economic policies. The future guidelines would seek to provide indications of how economic reform policies and foreign debt programmes should be designed and implemented in order not to undermine obligations for the realization of fundamental economic, social and cultural rights. The experts discussed the notion of trying to set "minimum standards" of economic, social and cultural rights; most experts agreed that the elaboration of such standards by States themselves would provide a useful operational tool to measure the impact of economic reforms on economic, social and cultural rights and ensure coherence between States' policies and obligations.

21. The experts agreed that a uniform framework or a global approach would not be applicable to all countries. "Core obligations" depended on the specific situation of each country and it should be up to the country to set benchmarks and indicators. It should be noted that "core obligations" were minimum obligations and did not constitute the full realization of economic, social and cultural rights. States and

national, regional and international financial institutions should be mindful of the fact that "core obligations" meant that essential social services such as education, health and social services could not be sacrificed when countries were engaged in debt or loan repayment.

22. Several experts commented that it would be useful for the guidelines to spell out the role of multilateral institutions such as the World Bank, the International Monetary Fund and WTO, as well as the role of transnational corporations. Some experts also noted the importance of human rights impact assessments as a policy tool and called for the implementation of the agreed conclusions and recommendations of the Working Group on the Right to Development in that respect.

23. One expert argued that the International Covenant on Economic, Social and Cultural Rights and the general comments adopted by its monitoring committee sought to establish the content of the rights involved and could develop minimum standards. The Covenant provided for a series of minimum obligations, minimum standards should be defined by the Committee on Economic, Social and Cultural Rights in a manner that corresponded to different situations. Experts noted the advantage of the independent expert on economic reform policies and foreign debt in drafting the guidelines, given that the special procedures mechanism had a more specific mandate and flexible working methods and could therefore continue setting minimum standards. In comparison, the Committee did not possess the ability to be more flexible and thus had focused on minimum content.

24. Many of the experts suggested that although the Millennium Development Goals were an internationally accepted framework, they should be used as a reference point and not be seen as providing "minimum standards" for economic, social and cultural rights. One expert pointed out that a criticism of the Millennium Development Goals was that they did not address problems of discrimination. In addition, the Goals did not completely reflect a rights-based approach.

25. The experts noted that although the guidelines would be very useful to policymakers and other stakeholders, the monitoring and enforceability of the guidelines would remain an open question.

III. Human rights and foreign debt

26. During the expert consultation, one of the experts presented a short overview of the view and operative framework on debt sustainability of the World Bank and IMF. The Bank and the Fund had adopted a joint framework for debt sustainability assessments in low-income countries. When a debt exceeded a country's capacity to pay, it became an unsustainable debt. The main aim of a debt sustainability framework was to guide the decisions of low-income countries to borrow in a way that matched their needs for funds with their current and future ability to service the debt, taking into account country-specific circumstances. The debt sustainability framework as formulated by the Bretton Woods institutions was meant to serve as an early warning system of the potential risk of debt distress in order to allow preventive action to be taken, if needed.

27. The World Bank-IMF debt sustainability framework classified countries into one of three policy performance categories using the Bank's Country Policy and

Institutional Assessment index. The framework was not meant to set clear ceilings, but instead to provide benchmarks that donors and countries could use as guides to the limits that should be taken into account when entering into a loan agreement. The framework did not impose a limit on the total assistance that countries should receive in order to achieve their development objectives. Countries that had low debt ratios were not expected or encouraged to borrow up to their thresholds.

28. A participant argued that the draft guidelines did not encapsulate the notion of an "enhanced definition" of debt sustainability. He argued that what was needed was not a new definition of debt sustainability, but guidance on how to calculate the value of external assistance that would be required of a country while enabling it also to comply with its human rights obligations. He noted that while it was important to fulfil human rights obligations, macroeconomic and financial stability were also important.

29. The participant stressed that the debt sustainability framework developed by the Bretton Woods institutions had not been elaborated only between the institutions but with the participation of State authorities in order to assist countries in developing home-grown borrowing strategies.

30. At present, the international community had not developed criteria for defining illegitimate debt. Rather, the international community had focused on ways to increase governance and transparency in borrowing as well as lending decisions and to foster the establishment of appropriate legal and governmental responsibility.

A. Impact of debt sustainability on human rights

31. The experts noted that human rights created a legal obligation and were not a concept that should be taken into account only when possible or convenient. Although the Bretton Woods institutions still retained powerful influence in the formulation of the modalities of the debt sustainability framework, the institutions could look at how human rights could be incorporated into the framework. Instead, the main priority of IMF was to ensure that countries could service their debt.

32. The challenge for the international community was to agree on how to calculate the cost of upholding minimum standards of human rights within the context of a debt sustainability framework. One expert commented that it should be the role of the United Nations to come up with an agreed framework that was applicable to a variety of stakeholders.

33. Sustainability of debt should refer to the capacity of a country to service its debt without having to sacrifice the protection and promotion of human rights. A participant argued that IMF believed that debt was unsustainable at some point and that a country should not stay in debt forever. It was estimated that half of the least developed countries continued to pay their debt at the expense of their ability to fulfil their human rights obligations.

34. Although the Heavily Indebted Poor Countries (HIPC) and the Multilateral Debt Relief Initiatives were welcomed by several countries, debt relief did not mean that countries should no longer be eligible for aid. Debt relief did not automatically ensure ability to fulfil a country's human rights obligations. However, it could assist countries in freeing resources for the realization of economic, social and cultural rights and help in the alleviation of poverty.

35. As recalled in the 2005 World Summit Outcome, the international community had decided to "emphasize that debt sustainability is essential for underpinning growth and underline the importance of debt sustainability to the efforts to achieve national development goals, including the Millennium Development Goals, recognizing the key role that debt relief can play in liberating resources that can be directed towards activities consistent with poverty eradication, sustained economic growth and sustainable development".[3]

B. The Millennium Development Goals as an interim benchmark for debt sustainability

36. Some of the criticisms of the debt sustainability framework included the absence of consideration of the Millennium Development Goals. The experts argued that the IFIs could use the Goals as they were the closest tool to an operational and internationally recognized framework that currently existed. However, it had also been criticized for placing too much emphasis on "macro" or aggregated figures.

37. In addition, it was argued that disparities were not addressed and that the Goals represented "temporary targets" and not rights. Human beings had rights, and those rights were realized when there were mechanisms to enforce them. Targets, however, could be achieved or not achieved, withdrawn, or modified at any time. The achievement of the Millennium Development Goals did not necessarily create the basis for citizens to demand accountability from Governments and international financial institutions in their economic reform and debt policies.

38. There was additional problem in that the Millennium Development Goals stipulated outcomes, but made no mention of process, which was extremely important from a human rights perspective. The use of national averages in monitoring the achievement of the Millennium Development Goals contributed to the neglect of disparities, exploitation and marginalization, which were the problems addressed by human rights.

39. One expert argued that incorporating the Millennium Development Goals into the debt sustainability framework would provide an opportunity for States to be able to start quantifying the resources needed to fulfil human rights obligations. He also emphasized that the Goals must never be taken out of the context of the United Nations Millennium Declaration, which emphasized commitment to the realization of internationally recognized human rights as the context in which development goals must be set.

40. In the report of the high-level task force on the implementation of the right to development (E/CN.4/2005/WG.18/2), which the Working Group on the Right to Development at its eighth session noted with appreciation, the task force identified debt sustainability as one of the constraints in attaining the Millennium Development Goals. The task force agreed that it would indeed be a challenge for human rights, including the right to development framework, to be incorporated in the realization and implementation of the Goals. Some of the challenges would include: first, combining specificity with getting States to focus on universally recognized and legally binding instruments as one of the strategies for the achievement of the Millennium Development Goals; second, the notion of the interdependence and indivisibility of human rights; third, the need for accountability

[3] General Assembly resolution 60/1, para. 26 (b).

mechanisms at the national and international levels that are participatory in nature, accessible, transparent and effective; lastly, the mobilization of civil society to act as a monitoring body for development efforts to ensure that the MDGs were achieved in a rights-based manner (ibid., paras. 36 and 37).

41. The task force described debt burden as a major obstacle for poor developing countries in realizing the Millennium Development Goals. It welcomed and encouraged efforts by donor countries and IFIs to consider additional ways to promote debt sustainability "including through the provision of grants, additional finance for debt relief over the Heavily Indebted Poor Countries (HIPC) social spending norms, as well as debt swaps linked to performance, in realizing the Millennium Development Goals in a rights-based manner" (ibid., para. 48). The task force argued that analysis of debt sustainability was dependent on a variety of variables and should thus be comprehensive and forward-looking, taking into account country specificities.

IV. Human rights and economic reform policies

A. Trade reforms

42. In a presentation at the expert consultation a participant noted that WTO was not a human rights body and had its own mission and objectives. Its mandate included the facilitation of technical cooperation between countries and encouraging market access for economies across the globe. The basic rule of the General Agreement on Tariffs and Trade had been to facilitate trade and to encourage countries to make commitments on market access.

43. WTO recognized in its agenda that trade policy itself was no longer sufficient. Its Director-General, Pascal Lamy, had started a new discussion called the "Geneva consensus". In summary, the "Geneva consensus" argued that trade was beneficial to welfare, but never sufficient. Other domestic and international policies were needed to ensure the effectiveness of market opening. Secondly, the challenges of market opening and globalization for developing countries were very important, and therefore warranted international action[4] from a human rights perspective.

44. According to the participant, trade negotiations aimed to alleviate poverty. The new WTO programme of aid for trade included encouraging trade opening to be analysed individually for each country. Currently, developing countries were treated as a group and trade negotiations did not take into account the different costs, subsidies and specific situation of each country.

45. Some experts, particularly those from civil society, argued that trade policies and agreements should indeed take into account the state of local economies. Although there should be non-discrimination in human rights terms, in this case the rules should allow different treatment favouring the poor and ensuring a more level playing field. In other words, there was a need in trade negotiations for affirmative action for the weak. Trade policies, agreements and any form of trade liberalization should take into account domestic situations, for example in the areas of industrial employment, agriculture and intellectual property rights. The participant strongly

[4] See http://www.wto.org/english/news_e/sppl_e/sppl45_e.htm.

argued that basic economic, social and cultural rights such as the rights to health, food and education should be ensured when trade rules were negotiated. Several experts reiterated that human rights should be at the centre of trade rules.

46. Trade policy reform decisions were often taken by domestic politicians in the capitals. This could be both an advantage and a disadvantage, given that decisions could be made not on sound economic judgement but for ideological reasons or reasons of electoral politics. However, it was also important to bear in mind that trade policies were also influenced by IFIs.

47. One way different stakeholders, including States and IFIs or WTO, could incorporate human rights into their policies was by carrying out human rights impact assessments during negotiations, or encouraging trade agreements or increased market access. However, as pointed out by a participant, many States did not have the capacity to carry out human rights impact assessments.

48. One expert commented that the language on trade in the guidelines would need to be aimed specifically at trade specialists or, as an alternative, that the guidelines should have different sections drafted for different audiences of decision makers and different contexts.

B. Macroeconomic stabilization and social sectors

49. Participating experts from the international financial institutions argued that to achieve macroeconomic stabilization of a country, there were trade-offs that needed to be taken into account. One welcomed the reference in the guidelines (under the section on macroeconomic stabilization) stating that economic policy reform often required difficult trade-offs, giving as examples the positive impacts of price stability as well as extended public (social) expenditure, both of which were considered conducive to the improved achievement of human rights objectives.

50. Macroeconomic stabilization policies should not be pursued at the expense of diminished investment in the social sectors such as education, health, water and adequate housing. In some cases, the World Bank would finance social programmes that targeted social resources to certain social sectors in developing countries. In recent years, improved economic performance of some developing countries appeared to have been the result of better management of macroeconomic policies. The presentation also highlighted some examples of how to cut budget deficits, including increasing revenue through taxes. However, it noted that imposing high taxes could have a very negative impact. Inflation was described as the worst possible tax, which would hit the poor and vulnerable. Instead, countries should move towards price stability.

51. IMF was often accused of setting rigid price stabilization targets for countries, taking a very restrictive view when inflation was high. The Fund, however, had always responded that it was the responsibility of the country concerned to set its own inflation target in order to be a responsible debtor and to work with its own specificities. However, critics of the Fund were concerned at the alleged lack of transparency and accountability with which it formulated its programmes and engaged in discussions with countries that took on a loan repayment programme. Such critics called on the Fund to make negotiations as transparent as possible and to include a variety of stakeholders during the whole process.

52. One human rights expert pointed out that it was important for the human rights community to be reminded that IFIs had a different vision, a finance-based vision with its own form of governance. Often, during the interactive dialogues of the Committee on Economic, Social and Cultural Rights, States argued that they were doing "their best" in the implementation of economic, social and cultural rights at the national level. However, the Committee often found that States almost invariably resorted to limiting their public expenditures in the social sectors. IFIs should consider that when formulating policies, macroeconomic management should not cut into social spending, which would then cause the State to fail to fulfil its human rights obligations.

C. Privatization

53. Some participants noted that the World Bank had not been particularly active in advising countries to privatize State enterprises. Privatization of social services such as health and education could result in the poor and the vulnerable no longer having access to basic social services.

54. One participant regretted that it was usually companies that were actually profitable for the State that were sold and privatized. Another unfortunate trend was the privatization of natural resources to ownership by transnational corporations.

55. Another participant from civil society questioned who would decide which social sectors or local industries needed to be privatized. He argued that privatization was often a loan condition imposed by IFIs. In addition, often neither IFIs nor the Government concerned held themselves accountable. He questioned whether in the long term the State was actually better off after privatizing. In the context of sub-Saharan Africa, given that there was a rather underdeveloped private sector, the participant argued that privatization would mean that basic services would not stay in the hands of locals but be transferred to large transnational corporations from industrialized countries.

56. The draft guidelines suggested that the decision to privatize public enterprises should not be based only on economic considerations but also on a thorough analysis of the need to ensure access by vulnerable groups to human rights-related goods and services. Several participants argued that article 2 of the International Covenant on Economic, Social and Cultural Rights should be understood to call for countries not to privatize basic services such as health and education.

57. Some participants argued that international assistance should not be tied to any pre-conditions regarding a specific type of ownership of key enterprises, as such conditions could be seen as contrary to the human rights obligation to ensure the enjoyment of the minimum content of rights, regardless of economic difficulties.

V. Human rights responsibilities of international financial institutions with regard to human rights

58. In the initial presentation on the minimum standards of economic, social and cultural rights it was noted that the main concern regarding international financial institutions' lending practices and so-called "conditionality" was that they were seen to undermine the accountability of States to their citizens, including their human

rights obligations, and instead engendered government accountability only to commitments to the institutions. If those commitments were negotiated and monitored without concern for international human rights obligations, then human rights commitments lost out. Unfortunately, commitments to the international financial institutions had stronger enforcement provisions than human rights obligations. The extent to which macroeconomic policy reforms might run counter to a borrowing country's human rights obligation under the International Covenant on Economic, Social and Cultural Rights or other international human rights treaties was virtually absent from the institutions' policy considerations. It was suggested that the World Bank/IMF also did not consider the human rights obligations of States so as to refrain from enforcing conditions that undermined such human rights obligations.

59. Yet, it was argued that when one studied the principles and provisions contained in the basic documents of IFIs and how they matched up to obligations, one could read human rights language into them even if they were not stated in rights-based terms. The World Bank's former Senior Vice-President and General Counsel, Robert Danino, had made clear that the Bank was engaged in human rights.

60. Other financial institutions, such as IMF, did not recognize a responsibility to engage in human rights analysis. Its Legal Department had done some analysis of how the Fund could start to engage in human rights issues; however, it concluded that the Fund was unable to do so as that could run counter to the Articles of Agreement of the Fund.

61. Participants also suggested that under international law, IFIs also had legal personality and were arguably bound by the terms of customary international law. Disregard of human rights by the World Bank or IMF reflected the failure of the member States that comprised those institutions to abide by their international human rights obligations.

62. A participant noted that IFIs were multi-State actors; they were international bodies made up of member States. The same member States had signed and ratified a variety of human rights conventions and were bound under international law. It was common practice in today's global world order for stronger member States to dictate terms and conditions, including economic reform policies, to poorer, less economically powerful States.

A. Obligations of debtor States

63. The human rights framework recognized individuals as rights holders having a particular set of entitlements and debtor States as duty bearers having a particular set of obligations. It was often remarked that the rights of vulnerable groups, marginalized sections of the population, in particular the poor and the disempowered, were negatively affected by economic policies. A participant pointed out that unless there was a legal framework in place in the debtor States, it would be difficult to provide a proper avenue for a vulnerable group to articulate concerns when it came to design and implementation of external debt and economic reform policies.

64. Another participant stated that debtor States should recognize that they did have human rights obligations with regard to the process and outcome of designing and implementing economic reform and foreign debt policies. He argued that debtor States did not sufficiently recognize the human rights consequences and impact of economic reform and foreign debt policies. He reminded all stakeholders of the affirmation of the Commission on Human Rights in its resolution 2000/82 that "the exercise of the basic rights ... cannot be subordinated to the implementation of structural adjustment policies and economic reforms arising from debt".

65. Debtor States should develop a legal framework that would ensure that their human rights obligations were recognized. Many participants noted with concern that policies relating to structural adjustment programmes, foreign debt relief and economic policies did not generally undergo an internal examination on the basis of their implications for the protection and promotion of human rights.

66. Some of the challenges that debtor States faced included the lack of resources, odious debt, the lack of good governance, accountability, transparency and corruption. A participant pointed out that it was difficult for States to service their debt if they could not guarantee food or human security for their populations. Several experts also mentioned the key role that the poverty reduction strategy papers played in recognizing previous regime debts that were taken on by the current regime of a State.

67. On 13 October 2005, the Government of Norway issued the Soria Moria Declaration on International Policy, stating that: "The [United Nations] must establish criteria for what can be characterized as illegitimate debt, and such debt must be cancelled", and that it would "support the work to set up an international debt settlement court that will hear matters concerning illegitimate debt". Non-governmental organizations had also argued in favour of the establishment of a fair and transparent arbitration process in relation to odious debts, noting that "existing mechanisms for debt relief (HIPC Initiative, the Paris Club and the London Club) are run entirely by creditors, violating the most basic rules of impartiality and transparency".[5]

68. A participant argued that there needed to be some degree of flexibility in the implementation of the programmes set out by IFIs and creditor States. He also argued that although measures could be taken to improve the transparency of negotiations between the debtor and creditor States and IFIs, barriers such as a high rate of illiteracy among the population could prove to be a major barrier in making the process more transparent.

69. The governance framework of a country was shaped by a number of policy and institutional priorities, argued another expert. Increasingly, the development policies of a particular State were shaped by the understanding of the impact of those policies on the lives of people. That concept was more important when referring to debtor States. The problem of corruption, in any way or form, undermined and negatively affected the efficient and effective use of resources. At the outset, corruption affected the design and implementation of external debt and economic reform policies. It manipulated development goals and increased the gap between what people expected from development and the actual results of development. The

[5] *Odious Lending. Debt relief as if morals mattered*, New Economics Foundation, 2006, p. 21.

more important requirements for corruption-free governance included the need to promote transparency and accountability.

70. Although debtor States were the primary guarantor of the human rights of their populations, creditor States and IFIs also played a critical role in ensuring access to rights.

B. Obligations of creditor States

71. Creditors should and must take reasonable measures to find out what their loans are being used for, and should be responsible for the role their loans played. More particularly, creditors should also take into account the role that conditionality played in impeding or facilitating access to human rights.

72. A participant pointed out that creditor States should have an obligation to carry out impact assessments to ensure that their loans did not have negative effects and did not impede the ability of debtor States to uphold their minimum human rights obligations.

73. It was important to note that all the members of the Paris Club and members of the European Union had ratified the International Covenant on Economic, Social and Cultural Rights and were therefore obligated to comply with its provisions. The United States, which had only signed and not ratified the Covenant, was still obligated to refrain from taking action that would go against the objective and purpose of the treaty.

74. States' obligations could derive from treaty law or customary international law. A participant argued that it was important to articulate human rights issues under customary international law for two reasons. Firstly, more often than not, States had obligations under multiple legal regimes, including the conditions of contracts with IFIs and transnational corporations, which might come into conflict with their human rights obligations. Secondly, customary international law pertaining to economic, social and cultural rights bound non-State parties to the Covenant so long as they had not established their status as persistent objectors to the norm. She also argued that customary international law protected the most fundamental human rights, and as a general matter applied to all States. Many scholars and international law experts believed that the minimum core of the main economic, social and cultural rights had become customary international law and were thus binding on all States, regardless of whether they had signed or ratified the Covenant.

75. When the State had ratified a human rights treaty, including the International Covenant on Economic, Social and Cultural Rights, it had the duty to take positive steps towards the realization of the rights therein. At the outset, the Government had assumed three types of obligations: obligations to respect, protect and fulfil. The obligation to respect required Governments to refrain from interfering directly or indirectly with the enjoyment of an individual's rights. The obligation to protect required Governments to prevent the violation of human rights by others. Lastly, the obligation to fulfil required Governments to adopt the necessary measures to achieve the full realization of rights.

76. The participant further argued that there were no provisions under the Covenant that concretely specified its jurisdictional scope. However, under the general obligation of international cooperation, States parties to the Covenant must

respect and protect social and economic rights extraterritorially regardless of whether jurisdiction was exercised abroad.

77. Article 2 (1) of the Covenant provided that "[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". A participant noted that a strict interpretation of article 2 created a special responsibility for creditors to ensure as a loan conditionality that the countries concerned were able to fulfil their minimum human rights obligations while servicing their debt.

78. The Committee on Economic, Social and Cultural Rights had elaborated general comments on the rights to food, health and water. In those general comments, the Committee highlighted the obligations to respect and protect, or the negative obligations related to international cooperation, over the obligation to fulfil. In the context of obligations to respect and protect economic and social rights extraterritorially, States should be wary of involvement in extraterritorial violations that could take place, for example, through IFIs.

VI. Concluding observations and the way forward

79. **The independent expert wishes to thank the Office of the High Commissioner for Human Rights for organizing the expert consultation and the experts for their participation and for providing invaluable input towards the finalization of the drafting of "general guidelines to be followed by States and by private and public, national and international financial institutions in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief, to ensure that compliance with the commitments derived from foreign debt will not undermine the obligations for the realization of fundamental economic, social and cultural rights, as provided for in the international human rights instruments".**

80. **The independent expert would also like to thank the General Assembly for the opportunity to apprise it of the current status of his efforts to draft those general guidelines. He is now considering the various suggestions and recommendations of the experts and other stakeholders with a view to deciding what would best inform the final text of the guidelines, and will submit the same to the Human Rights Council whenever the latter deems appropriate.**

81. **He would further like to call on the International Monetary Fund and the World Bank to continue their constructive engagement with his work so that the final draft guidelines fully benefit from their respective inputs and rich experiences concerning the issues in question. In this regard, he recalls that the ultimate objective of the guidelines is to be seen by both the human rights community and the international financial institutions as a useful tool that bridges operational gaps, encourages coherence, and seeks to provide an integrated and easily accessible tool in the policymaking process of both Governments and international organizations.**

82. **The independent expert wishes moreover to underscore the importance of coordination and complementarity of effort among the various actors within the international community. It is therefore his intention to consult with members of the Committee on Economic, Social and Cultural Rights as well as the members of the high-level task force on the implementation of the right to development to make sure that the final draft guidelines incorporate all elements of their work that are relevant to the task he has been assigned.**

83. **Finally, the independent expert reiterates the crucial role of non-State actors, in particular non-governmental organizations, in monitoring and playing an active role in lobbying IFIs to insist on the inclusion of minimum human rights core content, in particular economic, social and cultural rights, whenever economic reform policies are designed or formulated.**

Annex I

Agenda of the expert consultation

Time	*Item*	*Title*	*Issues*
Day 1			
10.00-10.30	1	Opening session	• Opening speech, presentation of meeting objectives • The structure of the draft guidelines on a human rights-consistent design and implementation of foreign debt and economic reform policies in developing countries
10.30-11.00	2	Economic, social and cultural human rights minimum standards	• Presentation of the minimum economic, social and cultural human rights standards that policy in the area of debt and economic reform should respect
11.00-12.30	3	Debt sustainability	• Presentation of the current World Bank/International Monetary Fund concept of debt sustainability and its link with human rights • Ideas for an alternative debt sustainability concept based on poverty reduction and human rights objectives • Open discussion, including questions of operationalization and policy consequences of different debt sustainability concepts for creditors and borrowers.
14.30-16.15	4	Trade	• Presentation on potential positive and negative impacts of trade reform elements on economic, social and cultural human rights • Open discussion on how trade reforms and agreements should be designed in order not to undermine human rights obligations
16.15-18.00	5	Macroeconomic stabilization, privatization, social sectors	• Examples of policy recommendations in the area of macroeconomic stabilization, privatization and social sector reform and their link with economic, social and cultural human rights • Discussion on what "best practices" can be drawn from past experience

Time	*Item*	*Title*	*Issues*
Day 2			
10.00-11.30	6	Governance and human rights obligations of debtor States	• Human rights obligations of debtor States regarding the process and outcome of designing and implementing economic reform and foreign debt policy • Open discussion
11.30-13.00	7	Human rights obligations of creditors	• Human rights obligations of creditor States and institutions, including joint responsibilities with debtor States, regarding the process and outcome of designing and implementing economic reform and foreign debt policy • Open discussion
15.00-17.10	8	Role of human rights actors	• Current and potential role of the human rights system and mechanisms, in particular with regard to normative advice, and participation in and monitoring of economic reform and foreign debt policy • Open discussion
17.10-17.30	9	Wrap-up	

Annex II

List of participants

Name and nationality	*Functional title*
Rocio Barahona Riera Costa Rica	Member, Committee on Economic, Social and Cultural Rights
Geoff Barnard Canada	Representative of the International Monetary Fund to the United Nations and the World Trade Organization
Aldo Caliari Argentina	Coordinator, Center of Concern
Caroline Dommen United Kingdom of Great Britain and Northern Ireland	Executive Director, 3DThree
Heather Grady United States of America	Director, Policy and Partnerships, Realizing Rights: Ethical Globalization Initiative
Eva Hanfstaengl Germany	Board member, Erlassjahr (German Jubilee Campaign)
Barry Herman United States of America	Senior Visiting Fellow, The New School
Robert Howse Canada	Professor of Law, University of Michigan Law School
Raja Khalidi United States of America	Officer in charge, Debt and Development Finance Branch, Division on Globalization and Development Strategies, United Nations Conference on Trade and Development
Martin Khor Malaysia	Executive Director, Third World Network
Panos Konandreas Greece	Senior Liaison Officer, Food and Agriculture Organization of the United Nations Liaison Office in Geneva
Raj Kumar India	Associate Professor, School of Law, University of Hong Kong
Steve Mandel United Kingdom of Great Britain and Northern Ireland	Senior Economist, New Economics Foundation
Gabriella Marceau Switzerland	Office of the Director-General, World Trade Organization

Name and nationality	*Functional title*
Françoise Medegan Benin	Premier Conseiller — Delegation Benin First Counsellor, Permanent Delegation of Benin to the United Nations Educational, Scientific and Cultural Organization
Jean Merkaert France	Chargé du programme financement du développement, Comité catholique contre la faim et pour le développement
Bernards Mudho Kenya	Independent expert on the effects of economic reform policies and foreign debt
Charles Mutasa Zimbabwe	Executive Director, African Forum and Network on Debt and Development
Smita Narula India	Assistant Professor of Clinical Law and Faculty Director, New York University
Richard Newfarmer United States of America	Special Representative of the World Bank to the United Nations and the World Trade Organization
Ugo Panizza Italy	Chief of Debt and Finance Analysis, Debt and Development Branch, Division on Globalization and Development Strategies, United Nations Conference on Trade and Development
Patrick Reichenmiller Switzerland	Policy Analyst, World Bank Office Geneva
Ibrahim Salama Egypt	Chair, Working Group on the Right to Development
Nicholas Sersison France	Committee for the Abolition of Third World Debt
Saidou Sidibe Niger	International consultant and former Minister of Finance of Niger
Thoralf Stenvold Norway	Senior Adviser, Social and Sustainable Globalization, Ministry of Foreign Affairs
Celine Tan Malaysia	Member, Third World Network
Elisabeth Tuerk Austria	Economic Affairs Officer, Division on International Trade and Commodities, United Nations Conference on Trade and Development

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Sixty-second session
Item 72 (c) of the provisional agenda*
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Burundi

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the independent expert on the situation of human rights in Burundi, Akich Okola.

* A/62/150.

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Report of the independent expert on the situation of human rights in Burundi, Akich Okola

Summary

The report covers the independent expert's eighth visit to Burundi, which was undertaken from 20 to 26 May 2007. The independent expert notes that the overall human rights situation seems to have improved, although cases of human rights violations committed by military personnel continue to be reported. Most violations registered relate to cases of ill-treatment, and sometimes torture, of suspects by police officials and violations of legal procedure by police and judicial officials. These issues are addressed directly with the officials responsible, by United Nations Integrated Office in Burundi (BINUB) human rights officers in the context of monitoring activities and are considered in human rights training sessions provided by BINUB and human rights non-governmental organizations.

Tensions between the Government and the ruling party, the Conseil national de défense de la démocratie-Force de défense de la démocratie (CNDD-FDD) escalated at the beginning of 2007, reaching a critical point following the replacement of Hussein Radjabu as chairman of the ruling party, on 7 February and his arrest on 27 April 2007. The situation has had a negative impact on credibility with regard to the Government's ability to uphold human rights and is creating divisions within Burundian society that could represent a threat to the peace process and to the stability of the national institutions.

To address these various issues, the independent expert calls on the Government of Burundi to respect due process in the case of the former chairman of CNDD-FDD and release all the former chairman's supporters who are not involved in illegal activities. He also recommends that the international community support the Government in its efforts to reform the justice system and, more broadly, to increase its support for humanitarian and development assistance.

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I. Introduction

1. In his previous report to the General Assembly (A/61/360), the independent expert discussed his fifth visit to Burundi. He undertook his sixth and seventh visits to the country from 7 to 14 October 2006 and from 14 to 27 January 2007 and submitted his report thereon to the Human Rights Council at its fourth session (A/HRC/4/5). The present report is submitted pursuant to Human Rights Council resolution 5/1 of 18 June 2007 entitled "United Nations Human Rights Council: institution-building", in which the Council decided to renew mandates until the date on which they would be considered by the Council according to its programme of work. Subsequently, the independent expert on the situation of human rights in Burundi, Akich Okola, who has been responsible for this mandate since it was entrusted to him by the Commission on Human Rights in 2004, was requested to submit a report to the General Assembly at its sixty-second session.

2. The present report covers the independent expert's eighth visit to Burundi, which he undertook from 20 to 26 May 2007. It addresses the general situation in Burundi with a special focus on:

(a) The political situation, including the implementation of the comprehensive ceasefire agreement between the Government and the Forces nationales pour la libération (FNL-Palipehutu) on 7 September 2006;

(b) The arrest and detention of the former chairman of the ruling party, the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD), and of some of his supporters;

(c) Progress in the investigation into the killing of some 30 suspected rebels by military personnel in Muyinga between May and August 2006;

(d) The situation concerning economic, social and cultural rights, its impact on the life of people in Burundi and the Government's actions to overcome the current challenges.

3. The independent expert wishes to thank the Government of Burundi for its cooperation during his visit and, in particular, for allowing access to all officials he had expressed the wish to meet and to all institutions and places necessary for the discharge of his mandate. He also wishes to thank all his interlocutors and counterparts for their contribution to the success of his mission.

4. During his eighth visit, the independent expert met the Minister for Foreign Affairs and International Cooperation, the Minister for National Solidarity, Human Rights and Gender Issues, the Attorney-General and the Minister for Planning and Reconstruction. He also met the representative of the Observatoire de lutte contre la corruption et les malversations économiques (OLUCOME), the representative of the Observatoire de l'action gouvernementale (OAG), the Executive Representative of the Secretary-General for Burundi, the Representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and Director of the Human Rights and Justice Section of the United Nations Integrated Office in Burundi (BINUB), the Ambassador of Belgium, the Ambassador of the African Union and the European Commission Head of Delegation.

5. The independent expert visited the judicial police station in Bujumbura and interviewed a number of detained supporters of the former chairman of CNDD-

FDD. One of them claimed that he had been tortured by agents of the Service national des renseignements (SNR) while he was in detention. All the detainees had been arrested in connection with their alleged participation in meetings to destabilize institutions in Burundi.

6. In the present report, the independent expert briefly highlights the most significant events which occurred during the period from January to May 2007. He also sets out the human rights trends and violations in Burundi and submits to the General Assembly his recommendations for improving the human rights situation in the country.

II. Political context

7. The visit of the independent expert was undertaken while an international round table to support the implementation of the poverty reduction strategy paper (PRSP) was meeting. At the time of his visit, the political situation was unstable owing to divisions within the ruling party, which had had an impact on the human rights situation in Burundi. In addition, the implementation of the Ceasefire Agreement signed on 7 September 2006 between the Government and the Forces nationales pour la libération and its armed wing, the Parti national pour la libération du peuple hutu (FNL-Palipehutu) was stalled during the first three months of 2007. However, in April 2007, with the mediation of the African Union, the Joint Verification and Monitoring Mechanisms of the Ceasefire Agreement resumed work on the modalities of implementing its provisions on immunity and the release of political prisoners. The question of the list of names of "political prisoners" to be released by the Government remained unresolved, however, at the time of the independent expert's visit.

8. Moreover, the security situation had deteriorated in the provinces where FNL combatants are based, because of delays in the demobilization process. There were increasing reports in April of abuses by frustrated FNL combatants, including extortion of food and money, and the conduct of illegal law and order activities, such as punishment of civilians. It was reported that the police and administrative officials appeared reluctant to intervene or, in some cases, were complicit. Meanwhile, new recruitment by both factions of FNL-Palipehutu was reported in several provinces, usually targeting youth.

9. The replacement of Hussein Radjabu as leader of the ruling party, CNDD-FDD, has created divisions within the party itself and affected the stability of the institutions in Burundi. Several senior officials close to him were dismissed by the President of Burundi and some of his supporters were persecuted by the authorities.

10. During the period under review, several high-level personalities and delegations visited Burundi. The Special Representative of the Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy, visited Burundi from 10 to 13 March 2007. She was impressed by the encouraging situation of children in the country; however, she expressed concern at the high number of cases of sexual violence involving minors and deplored the implication of police and military officials in many of these cases. She insisted that impunity must be eradicated. She also deplored the recruitment of children by armed groups. Prior to this visit, the Government released 50 minors accused of association with armed groups.

11. From 28 to 31 March 2007, the Assistant Secretary-General for Peacebuilding Support visited Burundi to review with key stakeholders the situation with regard to the work of the Peacebuilding Commission and the Peacebuilding Fund. During her visit, she said that the Peacebuilding Fund should be used to strengthen the capacity of the Government and also underlined the need for transparency.

12. A delegation from the Peacebuilding Commission visited Burundi from 11 to 14 April 2007 to discuss progress towards peace consolidation and the Government's engagement to this end. The delegation held meetings with representatives of the Government, the United Nations, the diplomatic community and civil society. The Peacebuilding Commission subsequently pledged to continue its support for Burundi. It held an informal meeting on 27 April to discuss the Strategic Framework for Peacebuilding in Burundi prepared by the Government with the support of BINUB. Stakeholders in Burundi, including BINUB, the Minister for Good Governance and diplomats, participated in the meeting by means of videoconferencing. The participants reportedly welcomed the inclusive, broad, consultative process that had led to the drafting of the document and made recommendations for improvements before its final submission to the Peacebuilding Commission. The Executive Representative of the Secretary-General stressed that the most immediate peace consolidation priorities were the effective implementation of the Ceasefire Agreement between the Government and FNL, and the urgent need to reach a consensus on transitional justice mechanisms and to ensure progress towards national reconciliation.

13. From 19 to 23 May 2007, the United Nations High Commissioner for Human Rights conducted a five-day visit to Burundi. She expressed satisfaction at the positive meetings she held with various counterparts and, in particular, at the consensus reached with the Government on key issues relating to transitional justice mechanisms, but regretted the lack of political will to make public the findings of high-profile investigations such as those into the Gatumba massacre and the disappearances and summary executions in Muyinga.

III. Transitional justice mechanisms

14. During his visit in May 2007, the independent expert discussed the issue of transitional justice with Government officials. They informed him that a delegation from United Nations Headquarters and OHCHR had visited Burundi from 5 to 9 March 2007 to clarify the nature of the national consultations process; the principles of non-immunity or amnesty for genocide, war crimes and crimes against humanity; and the neutrality and independence of the transitional justice mechanisms.

15. The independent expert was informed that the United Nations and the Government of Burundi had failed to reach complete agreement on the three outstanding issues mentioned above. However, it seemed that a common understanding had at least been reached on the national consultations. The Government, the civil society and the United Nations would establish an independent, impartial and all-inclusive body, on which they would all be represented and which would lead the national consultations process. This body would take into account the views of all transitional justice stakeholders, in particular victims, survivors and other vulnerable groups, as well as civil society at large.

16. On the amnesty issue, it was reported that the Government had committed itself to the principle, but had eventually refused to accept clearly the notion that amnesty previously granted should not be a bar to prosecution. It argued that no amnesty had ever been given by the Government. The fact remains, however, that "provisional immunity" (a Burundian term), which may have the same effect as amnesty, has been accorded by the Government of Burundi to all armed groups joining the peace process since 2003.

17. Furthermore, the United Nations considers that the two transitional justice mechanisms, the truth and reconciliation commission and the special tribunal, should be independent of each other, but should operate in complementarity and with respect for each other's mandate, legal status, powers and competencies. The Government's concept of the relationship between the two was that of interdependency, whereby the prosecutor of the special tribunal could initiate investigations and prosecutions only on the basis of truth and reconciliation commission reports. The idea that the prosecutor would be free to initiate the legal process on the basis of information received from other sources, or propio motu, was unacceptable to the Government.

18. However, the High Commissioner for Human Rights reached a verbal agreement with the Government that the national consultations process would be led by a steering committee composed of a representative of the Government, a representative of the United Nations and a representative of the civil society. The President of Burundi also confirmed to the High Commissioner that there would be no amnesty for major crimes committed during the conflict. The next step would be for the Government and the United Nations to establish the time frame for the implementation of this agreement. The question of the relationship between the truth and reconciliation commission and the special tribunal has yet to be resolved.

IV. Human rights situation

19. Despite the persistence of serious violations, the overall human rights situation seems to have improved. Few human rights violations have been committed by military personnel. Most violations registered relate to cases of ill-treatment, and sometimes torture, of suspects by police officers and violations of legal procedure by the police and by judicial officials. These issues are addressed directly with the officials responsible by the BINUB human rights officers in the context of human rights monitoring and training activities carried out by BINUB and by human rights NGOs.

20. The independent expert noted that supporters of the former chairman of CNDD-FDD were the main targets of violations of freedom of expression and, to some extent, freedom of movement, and torture during the reporting period. This situation needs to be addressed properly in order to ensure respect of the law.

21. Overall, there have been some positive changes in the attitude of the Government, evidenced by public statements in support of human rights. Since the beginning of 2007, the President has taken steps to approach various sectors of civil society, including the media and human rights non-governmental organizations (NGOs), acknowledging the important role they play in promoting respect for the rule of law and democracy. It is reported that the President paid surprise visits to the headquarters of three national human rights organizations in Bujumbura. He met

with staff and praised their work, which he acknowledged was accomplished with limited resources, and gave assurances of the Government's support.

A. Major human rights violations and abuses

1. Violations of the right to life

22. There has been an improvement concerning respect for the right to life since the signature of the Ceasefire Agreement on 7 September 2006 between the Government and FNL-Palipehutu. Nevertheless, isolated cases of violations persist. The period under review was marked by some killings committed by the police and military forces.

23. On 6 February 2007, a group of inmates tried to escape from Rumonge prison, in the province of Bururi. Police officers, who were on duty, opened fire on the inmates. According to information provided by witnesses, two inmates were killed after being captured by the police. However, the independent expert could not verify the information at the time of his visit.

24. Another case is related to the apparent excessive use of force against five men who were shot dead as they reportedly tried to rob a factory in the Buyenzi district of Bujumbura on the evening of 27 March 2007. According to information received, the men were killed by a group of policemen sent to prevent the robbery. After investigations, NGOs and the Human Rights and Justice Section of BINUB found indications that the police had used excessive force to neutralize the alleged thieves. Reportedly, no official investigation was conducted to clarify the circumstances of the killings. The independent expert believes that the authorities must open an investigation to verify if the police used excessive force during this intervention.

2. Violations of the right to physical integrity

25. Respect for the right to physical integrity improved slightly during the period under review. This might be the result of intensive advocacy and training organized by human rights NGOs and BINUB. During his visit, the independent expert was told that this training targeted law enforcement personnel and administrators who had allegedly been involved in the physical abuse of suspects. However, allegations of ill-treatment committed by the security forces and intelligence service personnel at some locations continued to be received. The examples given below illustrate the situation.

26. On 13 February 2007, a policeman from Socarti camp, in the Kamenge district of Bujumbura, arrested a young boy on suspicion of consuming narcotics. The police officer brought the young boy to a police station at Gihosha, in Bujumbura Mairie. The same day, a group of young boys came to see the police officer to discuss the arrest of their friend. According to reports, they claimed that the arrested boy was innocent. Irritated, the policeman loaded his rifle and shot in the air. The group of young boys ran away. It is reported that the policeman pursued and shot two of them. At the time of the visit of the independent expert, the policeman was being detained by the authorities in Bujumbura.

27. On 11 February 2007, six policemen of the Internal Security Police severely beat the owner of a bar and his brother. It is reported that both victims were injured on the forehead and arms. With the help of a human rights NGO, the victims

brought the case to the office of the prosecutor of the province of Gitega. It is reported that an investigation was opened by judicial authorities.

28. Another case concerned a primary school teacher and member of the human rights NGO Ligue Iteka in the province of Mwaro, who was beaten by the local police chief on 23 February 2007 and kept at the police station in the commune of Kayokwe. According to information provided to the independent expert, the teacher was arrested after he intervened to prevent the local police chief from assaulting the owner of a local bar. The chief of the local police, who was not happy with this action, arrested him. He was released after the administrator of the commune intervened.

3. Arbitrary and illegal arrests and detentions

29. Arbitrary arrests increased over the reporting period. They included cases of prolonged stay in police custody, detention in illegal places and lengthy pre-trial detention. Cases observed by human rights monitors included detention for minor charges on instruction from administrative authorities, mostly commune administrators and chiefs of zones and collines.[1] These violations increased in April and May 2007 after the arrest and detention of the former CNDD-FDD party chairman, Hussein Radjabu, on charges of threatening State security. He was briefly questioned by judicial officials and taken to Mpimba prison in the capital on 27 April 2007, where he was still being held, in isolation, at the end of the reporting period. Following his detention, several of his supporters were targeted by police officers and intelligence officials and were subject to harassment, ill-treatment, house searches and arbitrary arrest.

30. After the replacement of the former chairman of CNDD-FDD, some members of this political party were arrested by the authorities. In this context, the representative of CNDD-FDD in the province of Muyinga was arrested and jailed on 21 March 2007. He was accused of inciting the population, demobilized soldiers and military officers to support the former chairman of CNDD-FDD. According to information received, he was arrested because he had not participated in the extraordinary congress held in Ngozi on 7 February 2007. Moreover, it was also reported that five CNDD-FDD parliamentarians were harassed by the authorities for not agreeing with the conclusions of the Ngozi congress.

31. In April 2007, it was reported that the authorities had arrested more than 25 people on charges of threatening State security. They were all members of CNDD-FDD and supporters of Hussein Radjabu. Some of them were allegedly tortured during questioning at the headquarters of the Service national de renseignement (SNR) in Bujumbura. The independent expert visited a group held at a police station in Bujumbura and interviewed a man who claimed that he had been tortured during the interrogation process. The man presented physical evidence of severe ill-treatment. He was reportedly beaten with a stick at the SNR office in Bujumbura.

32. Furthermore, in April 2007, human rights monitors from BINUB interviewed several persons who said that they had been summoned by the SNR General Administrator. In each case, they stated that they had been questioned about activities allegedly conducted to support Hussein Radjabu or to attack those who did

[1] These are the lowest administrative divisions in Burundi.

not support him. In three reported cases, the individuals were allegedly subjected to serious ill-treatment in the presence or on the orders of the General Administrator. It should be recalled that the General Administrator of SNR is known to have become increasingly hostile to Mr. Radjabu. Those targeted include demobilized former CNDD-FDD combatants who had worked as informants when Mr. Radjabu was pursuing a campaign against FNL. The Human Rights and Justice Section of BINUB addressed its concerns at the reports of abuses to senior members of this institution and to judicial officials.

33. In another development, SNR intelligence agents arrested the FNL leader, Jean Bosco Sindayigaya, and one of his collaborators in Bujumbura on 31 May 2007 and repeatedly questioned them on their relations with Mr. Radjabu. The police arrested two other individuals in separate operations on charges of having participated in meetings to plan a rebellion with the former CNDD-FDD party chairman. The accusations are said to have been orchestrated by senior CNDD-FDD party members in order to collect evidence in the case against the detained former chairman of the party and to intimidate all those who do not align themselves with the Government wing of CNDD-FDD.

34. The independent expert is very concerned about the increasing incidence of illegal detention and the lack of respect for the law during arrests and detention during the reporting period and about the allegations of torture or ill-treatment of persons accused of supporting Mr. Radjabu or of holding "subversive" meetings. He notes that many of the supporters of the former chairman of the ruling party who were arrested by the police spent more time in detention than required by the law before the hearing in court.

4. Forced labour

35. As mentioned in his previous report, submitted to the Human Rights Council in March 2007 (A/HRC/4/5), the independent expert noted persistent trends of forced labour in Makamba, Bururi and Bujumbura Rural provinces. This might be explained by the presence of police and military positions to counter the FNL rebel movement in these areas. Police and military personnel reportedly compelled the populations of these provinces to look for firewood, water or supplies for them. Some local authorities continued to claim that those tasks were communal. Sometimes, the police used excessive force against the population. According to reports, those who resisted were threatened and ill-treated.

5. Sexual violence

36. More than 300 cases of rape of women and minors in all provinces of Burundi were reported during the first five months of 2007, according to reports from NGOs and the Human Rights and Justice Section of BINUB. The western provinces were the most affected by this phenomenon, because of the presence of law enforcement personnel and members of FNL. This figure reflects a steady increase in the number of cases reported, compared to the last five months of 2006. Despite some modest progress as a result of awareness campaigns by the Government, human rights NGOs and BINUB human rights officers, some of the victims remain silent. Furthermore, some administrative authorities and community elders (Bashingantahe) continue to recommend out-of-court settlements as a preferred option. In most cases the victims have received the necessary medical care in due

time, often through the assistance of specialized NGOs, but impunity for the perpetrators of such crimes remains the norm.

B. Impunity

37. The Government has made a little progress in bringing to justice civilians and lower-level law enforcement personnel involved in illegal activities. However, the alleged perpetrators of the Muyinga massacre[2] are still unpunished. The Government set up a judicial commission of investigation into this massacre in October 2006. The independent expert learned that the report of the commission was submitted to the Minister of Justice in December 2006. It seems that this report indicated that the commander of the fourth military region and the provincial chief of SNR must be held accountable. The independent expert learned from NGOs that the implementation of the report of the commission had been opposed by members of the Government.

38. In January 2007, the Government set up a second commission, which interviewed several key people allegedly implicated in the summary executions or the disappearances. Among the interviewees were the regional commander of the fourth military region, the former governor of Muyinga, the former provincial chief of SNR and the two military officers who had been arrested in September 2006 in connection with the massacre. The commission also interviewed an SNR driver. The soldiers and the driver reportedly admitted having transported the persons who disappeared and claimed to have been acting on the orders of their superiors. The SNR chief reportedly told the commission that he had acted on orders given by the former provincial governor. The commander of the fourth military region, questioned on 17 February 2007, reportedly tried to bribe the soldiers who could implicate him by promising that they would be among African Union troops that Burundi would send to any future peacekeeping operations.

39. In May 2007, the second commission handed over its report to the prosecutor. The latter publicly announced that none of the civilians implicated in the alleged summary execution of some 30 individuals in Muyinga between May and August 2006 would be prosecuted and passed the dossier to the Military Prosecutor's office for prosecution of the military personnel implicated. The human rights community was concerned that the decision appeared to have been taken in order to avoid implicating senior political figures. Following the prosecutor's decision, the provincial chief of the intelligence service, arrested in September 2006, was released in May 2007 and returned to Muyinga.

40. The independent expert expressed great concern regarding the lack of political will to bring to justice all those who participated in this massacre. Instead, there appears to be an attempt by the Government to wish away the truth. The Muyinga prosecutor in charge of this case was transferred and it is suspected that his transfer was the result of the Government's displeasure with his role in the investigation. According to information received, the reports of the two commissions confirmed that civilian authorities and military personnel were implicated in this issue. The independent expert found it difficult to understand why the prosecutor had decided

[2] Between May and August 2006, about 30 people were arrested, disappeared or were summarily executed in Muyinga.

that no action should be taken against civilians suspected to have been involved in this affair.

C. Judicial reform

41. As mentioned in the independent expert's previous reports (E/CN.4/2006/109, para. 68; A/61/360, paras. 86-93; A/HRC/4/5, para. 39), the administration of justice needs to be reformed in accordance with the provisions of the Arusha Agreement. The justice system is still weak owing to lack of equipment, poor training of staff, interference by politicians and corruption. Consequently, the population has largely lost faith in the system, leading to mob justice. For example, 30 persons suspected of witchcraft or rape were reportedly mobbed, and some killed, during the reporting period in Muramvya, Mwaro, Bubanza Karuzi, Muyinga, Ngozi, Kayanza, Gitega, Bujumbura Mairie and Bujumbura Rural provinces.

42. Detention centres throughout the country were regularly visited by human rights monitors, who observed that registers were not properly maintained. They documented cases of arbitrary detention and of failure to follow proper procedures. In addition, they found that hygiene conditions were substandard.

43. The continuing illegal arrests and detention, detention for civil matters, mixing of minors and adults in prison facilities, poor sanitation and delays regarding pre-trial detention remain matters of great concern. The Human Rights and Justice Section of BINUB and human rights NGOs continued to follow the situation throughout the country.

44. Revision of the Code of Criminal Procedure was started in March 2007 with the aim of bringing it into line with international human rights standards and in order to reflect the changes in the revised version of the Penal Code that is awaiting approval by the National Assembly. Both projects were funded by OHCHR. Representatives of the United Nations Children's Fund, the United Nations Fund for Women, the International Committee of the Red Cross and national and international human rights organizations participated in proofreading the revised version of the Code of Criminal Procedure. The Government told the independent expert that the revised Code includes provisions pertaining to the treatment of minors, both those in conflict with the law and victims and witnesses. It also provides for greater supervision of preventive detention by magistrates, rather than by the police, as is currently the case, and reduces the time suspects can be held in police detention (currently two weeks).

D. Poverty

45. During the period under review, the Government of Burundi organized a round-table conference at which donors pledged to fund the priority action programme for the implementation of the poverty reduction strategy paper 2007-2010. It is part of the public policies of the Government to accelerate the transformation of the economy and to facilitate national reconciliation. The priority action programme was presented to donors as an operational framework for the poverty reduction strategy paper which was adopted by the Parliament and the Government in 2006 and endorsed by the International Monetary Fund and the World Bank on 9 March and 13 March 2007 respectively. The aim of this

programme is to undertake development activities effectively in order to bring the country out of the circle of humanitarian assistance. The donors responded positively by pledging US$ 650 million.

46. The independent expert, who participated in the donor conference, commended the Government of Burundi for making this event successful and thanked the donor community for their commitment to helping Burundi. However, he regretted that the poverty reduction strategy paper ignores the question of runaway population growth in Burundi, which threatens not only to wipe out any gains the programme may yield, but also to create serious social problems.

47. Some NGOs that are active in the area of economic and social rights expressed deep concern about the lack of transparency in the coordination mechanism that would be put in place to ensure that aid is appropriately used for the needs of the population. The independent expert believes that such a coordination mechanism should include members of civil society as well as the international community in order to guarantee the credibility of the process and the adequate implementation of the poverty reduction strategy paper.

48. In another development, the situation of food security worsened during the first five months of 2007 as a result of unusually heavy rains, which destroyed crops and houses in many parts of the country. Some schools were destroyed by the heavy rain in western Burundi. The international community must not forget Burundi in terms of humanitarian assistance until the country has totally recovered from hunger. It would be a premature decision if the humanitarian community decided to decrease its assistance. At the same time, the Government must demonstrate its readiness to take over the valuable work that has been contributed by the humanitarian community.

49. Concerns were raised again regarding a general trend towards corruption and embezzlement, with scandals sometimes implicating high-ranking officials within the Government and the ruling party. Frequent strikes and the growing discontent of civil servants were often motivated by widespread poverty. While the Government should be commended for setting up an anti-corruption court, more action needs to be undertaken in order to demonstrate political will to fight corruption.

E. Activities of the human rights community

50. During his latest visit, the independent expert was informed that the Government of Burundi and the Human Rights and Justice Section of BINUB had embarked on various consultations to put in place an independent human rights commission. This process has drawn broad national support from all sectors in Burundi. In this regard, four seminars were conducted with representatives of civil society and the media as part of a programme of activities launched by the President in December 2006 in support of the establishment of the commission.

51. BINUB, in collaboration with the Ministry of National Solidarity, Human Rights and Gender Issues, organized a seminar on the different types of human rights violations and violations of international humanitarian law and how they can be addressed. Many recommendations were made by participants, including recommendations for the establishment of a school for military personnel and the integration of human rights into school curricula. Participants also underlined the

importance of ensuring the separation of powers and the independence of the judicial system.

52. The independent expert noted the frank and effective collaboration between the United Nations and civil society in Burundi. During the round table, at the request of the chief of the delegation of Norway, the Human Rights and Justice Section of BINUB and NGOs organized a briefing for the diplomatic corps on concerns relating to justice and impunity in Burundi.

53. Training sessions for law enforcement agents country-wide are continuing, with a focus on the legal human rights framework, human rights investigations and the protection of vulnerable groups. Another training of trainers course was organized for 24 judicial police officers in Bujumbura, with the aim of providing the officers with a greater understanding of human rights principles relating to law enforcement and of ethical conduct in the application of the law. The police officers requested further training relevant to other aspects of their work.

54. The Human Rights and Justice Section of BINUB continued to organize a weekly open debate with representatives of the media, members of the civil society, administrative officials and members of the judiciary during the reporting period. Tools to assist in creating human rights awareness were produced for dissemination in Burundi, including a booklet in the Kirundi language about the Universal Declaration of Human Rights.

V. Conclusions and recommendations

To the Government of Burundi

55. **The independent expert welcomes the commitment of the President of Burundi not to grant amnesty for major crimes committed during the conflict and urges the Government to speed up the process of establishing transitional justice mechanisms in fulfilment of its international undertakings to this end.**

56. **The independent expert is concerned about the failure of the Government to prosecute individuals involved in the Muyinga massacre and encourages the authorities to bring to justice those found responsible.**

57. **The independent expert calls upon the Burundian authorities to investigate incidents of sexual violence fully and bring to justice those who committed such crimes.**

58. **The independent expert notes that since he submitted his previous report no significant progress has been made in terms of implementing the provisions of the Ceasefire Agreement signed on 7 September 2006. He calls upon the Government and FNL-Palipehutu to implement the Ceasefire Agreement.**

59. **The independent expert urges the Government to respect due process in the case of the former chairman of CNDD-FDD and take measures to prevent harassment of his supporters. He encourages the Government to release those who have not been involved in illegal activities.**

60. **The independent expert notes that since he submitted his previous report no progress has been made by the Government of Burundi in concluding its investigations into the Gatumba massacre and bringing the perpetrators to**

justice. He reiterates his concern to the Government of Burundi and the international community on this matter.

To the international community

61. **The independent expert encourages the international community to increase its support for the reform of the justice system, in particular regarding the establishment of transitional justice mechanisms, including a truth and justice commission and a special tribunal.**

62. **The independent expert urges the international community to press the Government of Burundi to complete the investigation into the Gatumba and Muyinga massacres and to prosecute the perpetrators.**

63. **The independent expert encourages the Peacebuilding Commission to continue supporting the Government of Burundi by disbursing the necessary funds for the implementation of the development plan for 2007-2008.**

64. **The independent expert commends the international community, particularly the Regional Initiative on Burundi, the Security Council, the African Union and the Executive Representative of the Secretary-General, for their efforts in assisting Burundi to attain and consolidate peace.**

65. **The independent expert commends the international community for the pledges made at the donor's conference on 23 and 24 May 2007. He urges the community of donors to release the funds pledged at the Paris, Geneva and Brussels conferences, and recommends that the international community support the efforts of the Government of Burundi to encourage respect for and the promotion of human rights, and to secure lasting peace.**

66. **The independent expert calls upon the international community to increase its humanitarian and development assistance to Burundi, in particular in order to address the famine crisis in the northern part of the country, and to support the programmes of the poverty reduction strategy paper.**

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, submitted in compliance with Human Rights Council resolution 5/1, in which the Council decided that special procedures mandates were renewed until the date on which they would be considered by the Council according to the programme of work.

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Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Summary

The present report, submitted in accordance with Human Rights Council resolution 5/1, contains three main sections.

First, given a finite health budget, how does a State prioritize health interventions in a way that is respectful of human rights? Section II makes some preliminary observations on this complex question and urges all parties to give more attention to the challenging issue of health prioritization.

The Commission on Human Rights requested the Special Rapporteur to explore health impact assessments. Section III of the present report outlines a study he co-authored on that issue. It sets out a right-to-health impact assessment methodology and argues that such impact assessments are an aid to equitable, inclusive, robust and sustainable policymaking.

The right to the highest attainable standard of health encompasses medical care and the underlying determinants of health, such as water, sanitation, food, shelter and freedom from discrimination. There is a regrettable tendency to devote disproportionate attention to medical care at the expense of the underlying determinants of health.

Section IV focuses on two illustrative underlying determinants of health: access to safe water and adequate sanitation. It applies the right-to-health analytical framework to water and sanitation and makes a number of recommendations for States and other actors.

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I. Introduction

1. By its resolution 60/251 of 15 March 2006, the General Assembly concluded the work of the Commission on Human Rights and established the Human Rights Council. The mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health ("right to the highest attainable standard of health" or "right to health") is set out in Commission resolutions 2002/31 and 2004/27. The Human Rights Council, by its resolution 5/1, extended the mandate of the Special Rapporteur. The present report is submitted in accordance with that resolution.

2. In October 2006, the Special Rapporteur visited Peru, where he had meetings following up on his country mission of June 2004 (see E/CN.4/2005/51/Add.3). Following this visit, the Special Rapporteur sent a letter to the Government of Peru in August 2007 requesting further information about follow-up undertaken in response to the recommendations included in the report on his mission in 2004.

3. In February 2007, the Special Rapporteur visited Uganda. The mission had two principal objectives: to understand the role of Sweden, in particular the Swedish International Development Cooperation Agency, in relation to the highest attainable standard of health in Uganda; and follow-up to the mission that the Special Rapporteur had undertaken to Uganda in March 2005 (see E/CN.4/2006/48/Add.2). In October 2006, the Special Rapporteur also visited Washington, D.C., to meet the Nordic-Baltic Executive Directors at the World Bank and International Monetary Fund. The Special Rapporteur will submit a report thereon to the Human Rights Council.

4. In May 2007, the Special Rapporteur visited Ecuador. The mission to Ecuador was undertaken with the objective of investigating the health impact of the aerial spraying of glyphosate that has taken place along the border between Ecuador and Colombia; a report thereon will be submitted to the Council. In Ecuador, the Special Rapporteur also had consultations with civil society organizations on other right-to-health issues, regarding which the Special Rapporteur is preparing a letter to the Government. His correspondence, and any reply or replies from the Government, will be made public.

5. The Special Rapporteur visited Sweden in June 2007. The objective of the visit was to discuss the report on his mission to Sweden in January 2006, which was submitted to the Council at its fourth session, in March 2007 (A/HRC/4/28/Add.2). During his visit, the Special Rapporteur met with, inter alia, senior government officials and civil society representatives.

6. In November 2006, the Council, by its decision 2/108, requested the Special Rapporteur to identify and explore, from the perspective of the right to the highest attainable standard of physical and mental health, the key features of an effective, integrated and accessible health system. Between November 2006 and July 2007, the Special Rapporteur had a series of consultations on this issue with representatives of the World Health Organization (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the Office of the United Nations High Commissioner for Human Rights (OHCHR); with non-governmental organizations, including Realizing Rights: the Ethical Globalization Initiative, Save the Children UK and Care-Peru; and with a number of academics, researchers and health

workers. The Special Rapporteur continues to research and hold consultations on the issue and will report to the Council thereon at a forthcoming session.

7. The Special Rapporteur has sent a number of urgent appeals and other communications to various Governments; he has also issued some press releases. He will report on the communications in his annual report to the Council.

8. Between January and July 2007, the Special Rapporteur participated in a number of meetings convened by international organizations, Governments and civil society. In January, he spoke at a meeting in London of the International Planned Parenthood Federation and also met with the Chairperson of the WHO Commission on Social Determinants of Health. In February, he attended the UNAIDS reference group meeting in Geneva and delivered a keynote speech at a Public Health Alliance conference in Belfast. In March, he spoke at an event, organized by the United Nations Population Fund and the Centre for Reproductive Rights, in New York, during the session of the Commission on the Status of Women, and delivered a lecture on maternal mortality and human rights at Trinity College, Dublin. During the same month, he visited the Netherlands, held consultations with Medecins Sans Frontières and spoke at the Universities of Tilburg and Utrecht. In March, the Special Rapporteur attended the fourth session of the Human Rights Council and gave a keynote speech at the Midsin Global Health Conference in Newcastle, United Kingdom. In April, he gave a talk at the international secretariat of Amnesty International and in May attended a meeting organized by Glaxo Smith Kline to discuss its role in providing access to HIV/AIDS medicines. In June, he attended the annual meeting of the Council special procedures, organized by OHCHR. During the same month, he gave a keynote speech at a conference held in Prato, Italy, organized by Monash University, Australia, and King's College, London, and also visited Poland to speak at a meeting organized by the Federation for Women and Family Planning. In July, he spoke at meetings in Wellington organized by the New Zealand Aid and International Development Agency, as well as the civil society organization Health Promotion Forum. He also taught on a health, development and human rights course organized by the Initiative for Health and Human Rights, University of New South Wales, Australia.

9. The Special Rapporteur continues to prepare draft guidelines for pharmaceutical companies on access to medicines and expects to have a draft for consultation in the coming weeks.

10. All United Nations documents relating to the work of the Special Rapporteur are available on the OHCHR website (www.ohchr.org/english/issues/health/right/). For ease of reference, these documents, selected conference papers and other information can also be found on the website of the Right to Health Unit, Human Rights Centre, University of Essex (www2.essex.ac.uk/human_rights_centre/rth.shtm).

II. Prioritization of health interventions and respect for human rights

11. Throughout his mandate, the Special Rapporteur has argued that the right to the highest attainable standard of health should shape, and be integrated into, relevant national and international policies. If this is to happen, new human rights

techniques and tools are needed. The traditional human rights techniques — "naming and shaming", letter-writing campaigns, using test cases, slogans and so on — are insufficient for the task. While they still have a crucial role to play in the vindication of the right to health,[1] alone they are not enough. One of the new techniques needed is a way of monitoring the progressive realization of the right to health. For that reason, the Special Rapporteur devoted a report in 2006 to a human rights-based approach to health indicators (E/CN.4/2006/48). Another tool that needs more attention is constituted by impact assessments; for that reason, the present report includes a section on that issue.

12. The integration of the right to health into national and international policymaking also presents other challenges. For example, faced with limited resources, decision makers have to choose between different health policies and programmes, all of which contribute in one way or another to the realization of the right to health. One of the most difficult questions the Special Rapporteur is asked while on country mission is: "Given a finite budget, how can the Minister of Health prioritize health interventions in a manner that is consistent with the Government's national and international human rights obligations?"

13. Over many years, the health community has generated extensive literature and practice on prioritizing and rationing health interventions. Cost-effectiveness and equity are among the principles used by health economists and ethicists to help guide policymakers through this difficult terrain. Although they have not solved the dilemmas (far from it), they have given the issues considerable attention.

14. By contrast, the human rights community has not yet given these important issues the sustained attention they deserve. With a few honourable exceptions, there is little human rights literature on the topic.[2] United Nations treaty bodies offer no detailed guidance on how States can prioritize in a manner that honours their binding human rights obligations.

15. This state of affairs is surprising, because priority-setting raises profound human rights issues. In practice, prioritization has often privileged the health needs of wealthy, urban populations over the entitlements of the rural poor. It has often marginalized the health entitlements of women, persons with disabilities and other disadvantaged groups. This mirroring and deepening of patterns of inclusion and exclusion is offensive to the right to the highest attainable standard of health.

16. Nonetheless, some still maintain that the human rights community should not involve itself in issues of prioritization. Their response to the prioritization problem is simple: allocate more resources to health.[3] This response is partly right. Many countries spend far less than the $34 per capita minimum health expenditure

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[1] For example, see the report of the Special Rapporteur of January 2007 (A/HRC/4/28), sect. III.

[2] Some literature and court cases address the issue, such as *Soobramoney* v. *Minister of Health*, Constitutional Court of South Africa, case CCT 32/97, 26 November 1997; and F. Alvarez-Castillo, T. K. Sundari Ravindran and H. de Pinho, "Prioritisation", in T. K. Sundari Ravindran and H. de Pinho, eds., *The Right Reforms? Health Sector Reforms and Sexual and Reproductive Health* (University of Witwatersrand, 2005).

[3] Consistent with the State's obligation, in article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, to devote the maximum available resources to the right to health.

recommended by the WHO Commission on Macroeconomics and Health.[4] Thus, calls for greater investment in health, in both developing and developed countries, are usually entirely legitimate.

17. However, even when more resources are made available, it is unlikely that they will support all health needs. In other words, tough priority choices will still have to be made, although prioritization becomes meaningless if the available resources do not reach a basic minimum threshold. Consequently, a call for increased health resources — and nothing more — rarely satisfies those who wish to see the right to health animate policymaking processes.

18. The modest purpose of the present section is to urge all relevant parties to pay more attention to the complex, sensitive issue of how to set health priorities in a manner that is consistent with human rights, including the right to the highest attainable standard of health. With a view to stimulating this discussion, the paragraphs below provide some brief, preliminary observations.[5]

Preliminary observations

19. Prioritization demands close collaboration between human rights specialists and health specialists, including epidemiologists and health economists.

20. Human rights will sometimes signal a particular substantive health outcome from the process of prioritization, but more frequently they will suggest a series of procedural considerations (for example, participation, monitoring and accountability) that have to be taken into account when setting priorities.

21. It would be very difficult, if not impossible, for a health authority to apply the right to health to the issue of prioritization if it were not also integrating human rights throughout its responsibilities. In short, a health authority cannot properly apply the right to health to the process of prioritization in isolation.

22. The right to health includes entitlements to medical care and to underlying determinants of health, such as adequate sanitation, water, nutrition and housing. Therefore, priority setting across a range of sectors, and not just the health sector, will have a profound bearing on the right to health. This underscores the crucial importance of intersectoral collaboration for the delivery of the right to the highest attainable standard of health.

23. The human rights approach does not make the unreasonable demand that all human rights must be realized overnight. In recognition of present realities, including resource constraints, it allows for the progressive realization of the right to health over a period of time. Prioritization must be conducted in this context of progressive realization.

24. Consequently, priority-setting must take place within the framework of a comprehensive national health strategy that spells out how the State expects to

[4] See Commission on Macroeconomics and Health, *Macroeconomics and Health: Investing in Health for Economic Development* (WHO, 2001).

[5] The information is based on papers prepared by Carla Clarke, Gunilla Backman, Rajat Khosla and Stephania Tripodi for an informal consultation organized by the International Federation of Health and Human Rights Organizations and the University of Essex in July 2005, as well as a draft chapter prepared by Judith Bueno de Mesquita later in the same year following additional consultations. Many thanks to all.

progressively implement the various elements of the right to the highest attainable standard of health. In turn, that strategy must be informed by a comprehensive and up-to-date baseline assessment of health status, and enjoyment of the right to health, throughout the jurisdiction.

25. Everyone has the right to participate in health-related decision-making that affects them.[6] The prioritization process must include the active and informed participation of all stakeholders, including marginalized groups, in agenda-setting, decision-making, and monitoring and accountability arrangements.

26. From the human rights perspective, priority-setting must give particular regard to improving the situation of populations, communities and individuals that are especially disadvantaged in the country in question, including those living in poverty. In other words, vulnerability and disadvantage are among the reasonable and objective criteria that must be applied when setting priorities. Regard must be given to both direct and indirect discrimination. Thus, data must be disaggregated as far as possible.

27. Monitoring and accountability mechanisms are needed in relation to the priority-setting process, as well as implementation of the selected priorities. For this purpose, appropriate indicators and benchmarks are essential.

28. The right to health includes some obligations of immediate effect that are not subject to progressive realization. These core obligations reflect minimum essential levels of the right to health, such as freedom from discrimination, the preparation of a comprehensive national health strategy, integrated primary health care (as set out in the Alma-Ata Declaration), and access to basic sanitation. Despite important insights provided by various authors, much more work still has to be done to clarify the content of these core obligations.[7] However, so far as they can be identified with sufficient clarity, the process of prioritization should not compromise the core obligations arising from the right to health.

29. Given the requirement of progressive realization, all elements of the right to health must at least maintain their current levels of implementation (the principle of "non-retrogression").

30. In line with their human rights responsibilities of international assistance and cooperation, donor countries should help developing countries prioritize in a manner consistent with the right to health. Donors and international organizations, including international financial institutions, should ensure that their policies and programmes support national priorities of recipient countries that have been decided by democratic and participatory processes.

Conclusions

31. **While human rights have a constructive contribution to make to prioritization, they are unlikely to provide neat answers to highly complex issues, any more than do ethics, economics or general theories of justice. They are likely to rule out some processes and some choices, leaving a number of options, all of which are legitimate.**

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[6] E/2001/22-E/C.12/2000/21, annex IV, general comment 14, para. 54.

[7] See *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, Audrey R. Chapman and Sage Russell, eds. (Antwerp, Intersentia, 2002).

32. **The preceding paragraphs are simply preliminary points for discussion. Much more work is needed to explore in detail the philosophical and practical contribution of human rights to health priority-setting. As the health and human rights movement matures, it is very important that it respond to this challenge. Moreover, applying human rights to the prioritization process will dispel some common misunderstandings about the right to the highest attainable standard of health and help to establish the very extensive common ground between public health, medicine and human rights.**

III. Impact assessments and the right to the highest attainable standard of health

33. Any modern policymaker, unless purely driven by ideology, will wish to consider, in a balanced, objective and rational manner, the likely impact of a proposed new policy, especially on those living in poverty. Moreover, before a State introduces a new proposal, it must ensure that the initiative is consistent with its existing national and international legal obligations, including those relating to human rights.

34. In these circumstances, there is a growing demand for Governments to carry out human rights impact assessments prior to adopting and implementing new policies, programmes and projects. To date, however, relatively little work has been done to develop methodologies and tools to help Governments undertake human rights impact assessments.

35. In his initial report to the Commission on Human Rights in 2003, the Special Rapporteur explained that he wished to examine impact assessments and the right to health (E/CN.4/2003/58, paras. 82-85). In response, the Commission specifically requested the Special Rapporteur to pursue his analysis of health impact assessments.[8] Since then, he has looked at impact assessments in relation to trade rules and policies.[9] While on country missions, he has also raised the issue of impact assessments in appropriate cases.[10]

36. In 2006, the Special Rapporteur co-authored, with Gillian MacNaughton, a report on impact assessments, poverty and the right to the highest attainable standard of health.[11] The United Nations Educational, Scientific and Cultural Organization (UNESCO) funded the research.[12] The purpose of the project was to contribute to the development of a human rights impact assessment methodology, with a particular focus on the right to the highest attainable standard of health. The report is over 60 pages in length and includes four detailed annexes. The present section serves as a brief introduction to the full report.

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[8] See *Official Records of the Economic and Social Council, 2003, Supplement No. 3* (E/2003/23), sect. II.A, resolution 2003/28, para. 16.

[9] See E/CN.4/2004/49/Add.1, paras. 53-56.

[10] See, for example, A/HRC/4/28/Add.2, paras. 122 and 123.

[11] Paul Hunt and Gillian MacNaughton, *Impact Assessments, Poverty and Human Rights: A Case Study Using the Right to the Highest Attainable Standard of Health* (UNESCO, 2006). The full report is available from the website of Essex University, Human Rights Centre, Right to Health Unit (www2.essex.ac.uk/human_rights_centre/rth/projects.shtm).

[12] The Special Rapporteur is most grateful to UNESCO and Ms. MacNaughton.

37. Human rights impact assessment is the process of predicting the potential consequences of a proposed policy, programme or project on the enjoyment of human rights. The objective of the assessment is to inform decision makers and the people likely to be affected so that they can improve the proposal to reduce potential negative effects and increase positive ones. Human rights impact assessment is a relatively recent concept. However, other forms of impact assessment, such as environmental and social impact assessments, are now well-established and routinely undertaken in many countries to evaluate proposed policies, programmes and projects. Similarly, such initiatives, prior to being adopted and implemented, should be assessed for their impact on human rights.

38. The report reviews and then draws key criteria from three pioneering human rights impact assessment initiatives: (a) the Handbook in Human Rights Assessment (2001) of the Norwegian Agency for Development Cooperation; (b) the Rights and Democracy initiative on human rights impact assessment (2007); and (c) the Health rights of women assessment instrument (2006) of the Humanist Committee for Human Rights.[13] The report focuses specifically on the obligation of Governments to undertake impact assessments in order to comply with their obligation to progressively realize human rights. Accordingly, it proposes a methodology specifically suited to assessments of governmental policies, programmes and projects.[13] Importantly, the methodology is intended to assess proposed initiatives: it does not consider impact assessments for initiatives that have already been implemented. Of course, developing such a methodology is a complicated undertaking and will require more work and discussion. Comments on the study would be most welcome.

39. In designing a methodology for impact assessments, there are at least two distinct approaches. The first approach is to develop a self-standing methodology for human rights impact assessments, just as has been done for environmental and social impact assessments. The other approach is to develop a methodology for integrating human rights into other existing types of impact assessments. The report proposes the second approach, consistent with mainstreaming human rights into all Government processes. The integration of human rights into existing impact assessments will require interdisciplinary collaboration between human rights professionals, experts in various types of impact assessment and others. The study contributes to this process by providing some human rights considerations and frameworks and by outlining a methodology.

40. The report presents a methodology in two parts. The first part sets out seven general principles for performing a rights-based impact assessment. These are: (a) to use an explicit human rights framework; (b) to aim for progressive realization of human rights; (c) to promote equality and non-discrimination in process and policy; (d) to ensure meaningful participation by all stakeholders; (e) to provide information and protect the right to freely express ideas; (f) to establish mechanisms to hold the State accountable; and (g) to recognize the interdependence of all human rights.

41. The second part of the methodology proposes six steps for integrating the right to health, as a starting point for integrating all human rights, into existing impact assessments. The steps are: (a) to perform a preliminary check on the proposed

[13] Some human rights assessments focus on non-governmental actors; for example, see the recent study on impact assessments and business (A/HRC/4/74).

policy to determine whether or not a full-scale right-to-health impact assessment is necessary; (b) to prepare an assessment plan and distribute information on the policy and the plan to all stakeholders; (c) to collect information on potential right-to-health impacts of the proposed policy; (d) to prepare a draft report comparing the potential impacts with the State's legal obligations arising from the right to health; (e) to distribute the draft report and engage stakeholders in evaluating the options; and (f) to prepare the final report detailing the final decision, the rationale for the choices made and a framework for implementation and evaluation.

42. Follow-up activities are proposed in the final section of the report. The Special Rapporteur is promoting the study during his country missions and it has already been presented at some workshops. Subject to further funding, it would also be helpful to distribute the report more widely for discussion. Later in 2007, the Special Rapporteur will present the report at the eighth International Health Impact Assessment Conference.

43. Further work is required to determine whether mainstreaming human rights, such as the right to health, into other existing impact assessments is feasible, including case studies with different types of impact assessments. The practical tools, such as checklists, interview guidelines and charts for connecting impacts to human rights obligations (all of which are found in the report), also need further development. There is a need to encourage Governments and impact assessment professionals to follow rights-based approaches to impact assessment and policymaking.

44. In conclusion, human rights impact assessments are an aid to equitable, inclusive, robust and sustainable policymaking. They are one way of ensuring that the right to health, especially of marginalized groups, including the poor, is given due weight in all national and international policymaking processes. From the right-to-health perspective, an impact assessment methodology is a key feature of a health system. Without such a methodology, a Government cannot know whether its proposed policies, programmes and projects are on target to progressively realize the right to the highest attainable standard of health, as required by international human rights law.

IV. Water, sanitation and the right to the highest attainable standard of health

45. The health of populations, communities and individuals requires more than medical care. Equally important are the social, cultural, economic, political and other conditions that make people need medical care in the first place.[14] A WHO commission is currently studying the social determinants of health, such as gender, poverty and social exclusion.[15] Other determinants of health include access to water, sanitation, nutrition, housing and education.

[14] See preamble to the Constitution of the World Health Organization and R. Beaglehole, "Overview and framework", in Roger Detels, ed., *Oxford Textbook of Public Health* (Oxford University Press, fourth edition, 2002).

[15] Information about the Commission can be found on the WHO website at www.who.int/social_determinants/en/.

46. In some quarters, the right to the highest attainable standard of health is narrowly understood to mean a right to medical care. However, this view is inconsistent with international human rights law, which encompasses both medicine and public health. The International Covenant on Economic, Social and Cultural Rights, for example, and the Convention on the Rights of the Child clearly affirm that the right to health is more than access to medical care. Specifically, article 24 of the Convention on the Rights of the Child states that the right to health includes access to nutritious food, clean drinking water, environmental sanitation and so on, as well as medical care. Equating the right to health with a right to medical care is a misinterpretation of international human rights law.

47. The right to the highest attainable standard of health is an inclusive right extending not only to timely and appropriate medical care but also to the underlying determinants of health, such as access to safe water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, access to health-related education and information, including on sexual and reproductive health, and freedom from discrimination.[16] In short, the right to health includes both medical care and the underlying determinants of health.

48. In his reports, the Special Rapporteur has consistently looked at medical care and the underlying determinants of health, including the impact of poverty and discrimination on health. However, he has noticed a definite tendency in some Governments, international organizations and elsewhere to devote a disproportionate amount of attention and resources to medical care at the expense of the underlying determinants of health. This is deeply regrettable because both are fundamental elements of the right to the highest attainable standard of health.

49. Although space constraints do not permit a detailed examination of all relevant issues, the present section focuses on two underlying determinants of health: access to safe water and adequate sanitation.[17] It adopts the right-to-health analytical framework that the Special Rapporteur has used in previous reports in relation to other health issues. Although confined to only two essential conditions of health, namely water and sanitation, the analysis is illustrative and relevant to other underlying determinants of health.

Water, sanitation and human rights

Water, sanitation and the right to health

50. Safe water and adequate sanitation are two integral and closely related underlying determinants which are essential for the realization of the right to the highest attainable standard of health. Inadequate access to water and sanitation can threaten life, devastate health, destroy opportunities, undermine human dignity and cause deprivation.[18]

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[16] E/2001/22-E/C.12/2000/21, annex IV, general comment 14, para. 11.

[17] In this regard, similar but different terms are sometimes used, such as "safe and potable water and adequate sanitation" and "safe drinking water and basic sanitation". For the purposes of the present section, "safe water and adequate sanitation" is used for the underlying health determinants of water and sanitation.

[18] See UNDP, *Human Development Report 2006* (http://hdr.undp.org/hdr2006/report.cfm).

51. It is estimated that 1.8 million people die each year from diarrhoeal diseases, including cholera; 90 per cent of these are children under 5 years of age, mostly in developing countries. According to WHO, 88 per cent of diarrhoeal disease is caused by unsafe water and inadequate sanitation. Improved water supply could reduce diarrhoea morbidity by up to 25 per cent, while improved sanitation could reduce it by 32 per cent.[19]

52. Approximately 1.3 million people die of malaria each year; 90 per cent of these are children under 5 years of age. Irrigation, dams and other water-related projects are primary contributors to this disease. Better management of water resources would reduce transmission of malaria and other vector-borne diseases.[19]

53. Similarly, 160 million people are infected with schistosomiasis, a disease causing tens of thousands of deaths every year, mainly in sub-Saharan Africa. The disease is strongly related to unsanitary excreta disposal and the absence of nearby sources of safe water. Basic sanitation could reduce the disease by up to 77 per cent.[19]

54. Some 6 million people worldwide are blind because of trachoma and more than 150 million people are in need of treatment. Improving access to safe water sources and better hygiene can reduce trachoma morbidity by 27 per cent.[19]

55. Access to safe water and adequate sanitation is crucial in the context of HIV/AIDS. In relation to HIV/AIDS, as with other medical conditions, water is needed for taking medication, bathing patients, washing soiled clothing and for essential hygiene that reduces exposure to infections. When children born to women living with HIV are ensured uninterrupted access to nutritionally adequate breast-milk substitutes that are prepared using safe water, they are at less risk of illness and death.[20] As the former Secretary-General Kofi Annan observed: "We shall not finally defeat AIDS, tuberculosis, malaria, or any other infectious diseases that plague the developing world until we have won the battle for safe drinking water, sanitation and basic health care."[21]

56. In the United Nations Millennium Declaration and the Plan of Implementation of the World Summit on Sustainable Development, the international community recognized the relationship between poverty, water, sanitation, health and human development by including water supply, sanitation and hygiene in the Millennium Development Goals. Target 10 of the goals is to halve by 2015 the proportion of people without sustainable access to safe drinking water and basic sanitation. However, according to the WHO/UNICEF Joint Monitoring Programme, on current trends the world will miss the sanitation target by more than half a billion people. Also, although the world as a whole is on track to achieve the drinking water target, the trend appears to be deteriorating.[22]

57. Achieving the target on water and sanitation would bring substantial economic benefits. According to a recent WHO study, each dollar invested would yield an economic return of between $3 and $34, depending upon the region. If the target for water and sanitation were met, the health-related costs avoided would reach

[19] See www.iwho.int/water_sanitation_health/publications/facts2004/en.

[20] UNAIDS/UNICEF/WHO, *HIV and Infant Feeding: Guidelines for Decision Makers*, 1998.

[21] Statement made by Kofi Annan to the fifty-fourth World Health Assembly, Geneva, 17 May 2001.

[22] WHO/UNICEF, *Meeting the Millennium Development Goal Global Water and Sanitation Target: the Urban and Rural Challenge of the Decade* (2006).

$7.3 billion per year.[23] In other words, an improvement in water and sanitation is an investment that not only saves lives and enhances health, but also generates huge savings for both national health budgets and households.[24]

Water, sanitation and other human rights

58. In addition to the right to the highest attainable standard of health, water and sanitation contribute to the realization of several other economic, social and cultural rights.

59. In the context of the right to adequate food, for example, the Committee on Economic, Social and Cultural Rights has emphasized the importance of ensuring sustainable access to water for agriculture.[25] The Special Rapporteur on the right to food has also underscored the interdependence of water and the right to food, observing that clean drinking water is an essential part of healthy nutrition.[26] At the regional level, as part of the right to food security, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa requires States to ensure women's access to clean drinking water.

60. Both the Committee on Economic, Social and Cultural Rights and the Special Rapporteur on the right to education have emphasized that schools should have a supply of drinking water, as well as separate, private and safe sanitation facilities for girls.[27]

61. Sustainable access to safe water and adequate sanitation also constitutes a fundamental element of the right to adequate housing.[28] Principle 2 of the Programme of Action of the International Conference on Population and Development (Cairo, 1994) recognizes that all individuals have the right to an adequate standard of living for themselves and their families, including adequate water and sanitation (see A/CONF.171/13, chap. I, resolution 1, annex). Moreover, access to water and sanitation is a key element of the mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the Special Rapporteur on housing emphasizes that inadequate access to water is particularly devastating for women and children.[29]

62. In short, access to water and sanitation is integral to several human rights, including the right to the highest attainable standard of health.

Water and sanitation as a human right

63. The human right to water and sanitation is recognized as a self-standing right in a wide range of international documents, including treaties and declarations, as

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[23] B. Evans et al., *Closing the Sanitation Gap: the Case for Better Public Funding of Sanitation and Hygiene* (OECD, 2004).

[24] J. Bartram et al., *Focusing on improved water and sanitation for health, Lancet*, vol. 365 (2005).

[25] E/2000/22-E/C.12/1999/11, annex V, general comment 12, paras. 12 and 13.

[26] A/56/210, paras. 58-71; see also E/CN.4/2003/54.

[27] E/CN.4/2006/45, para. 129.

[28] E/1992/23-E/C.12/1991/4, annex III, general comment 4, para. 8.

[29] See E/CN.4/2003/5 and E/CN.4/2002/59.

well as by governmental and non-governmental bodies and in various court decisions.[30]

64. While the International Covenant on Economic, Social and Cultural Rights makes no explicit reference to the right to water and sanitation, the Committee on Economic, Social and Cultural Rights takes the view that water is an independent right implicit in the Covenant and closely related to the rights to the highest attainable standard of health, adequate housing and food.

65. The Committee defines the right to water as the right of everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.[31] It specifies that access to adequate sanitation constitutes one of the principal mechanisms for protecting the quality of drinking water and that States should progressively extend safe sanitation services to rural and deprived urban areas.[32] In its elaboration of the normative content of the right to water and the legal obligations that arise from it, the Committee notes that, during armed conflicts, emergency situations and natural disasters, the obligations of States encompass the right to water, as well as those provisions of international humanitarian law relating to water.[33]

66. For its part, in its resolution 2006/10, the Subcommission on the Promotion and Protection of Human Rights confirms the right to sufficient supplies of water to meet essential needs, as well as access to acceptable sanitation facilities that take account of the requirements of hygiene, human dignity, public health and environmental protection (see A/HRC/2/2, chap. II).

67. At the regional level, the right to a sufficient quantity of water to meet basic needs is recognized by the Council of Europe in paragraphs 5 and 9 of its recommendation 14 on the European Charter on Water Resources (2001). Similarly, at their recent summit, the Heads of State or Government of the Non-Aligned Movement acknowledged the right to water for all in their final document.

68. At the national level, the constitutions of certain countries (for example, South Africa and Uruguay) incorporate an explicit right to water. Moreover, a number of judicial decisions rely upon this human right. For instance, in the case of *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council*, the South African High Court found that disconnecting a water supply represented a prima facie breach of the State's constitutional duty to respect the right to water. Similarly, in *Subhash Kumar v. State of Bihar*, the Indian Supreme Court held that the right to life was a fundamental right under Article 21 of the Constitution, and it included the right of enjoyment of pollution-free water and air for full enjoyment of life.

69. The *Human Development Report 2006* underscores the importance of adopting a rights-based approach to the provision of safe water and adequate sanitation, and emphasizes that access to water is a basic human need as well as a fundamental human right. According to the report, the right to water corresponds to a secure,

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[30] See WHO, OHCHR, the Centre on Housing Rights and Evictions, *Water Aid* and the Center for Economic and Social Rights, *The Right to Water* (2003) (www.who.int/water_sanitation_health/rtwrev.pdf).

[31] E/2003/22-E/C.12/2002/13, annex IV, general comment 15, para. 2.

[32] Ibid., para. 29.

[33] Ibid., para. 22.

accessible and affordable water supply.[34] The report emphasizes the responsibility of governments to recognize the right to water in enabling legislation and to work towards its progressive realization.

Right-to-health analytical framework

70. In recent years, the Committee on Economic, Social and Cultural Rights, WHO, civil society organizations, academics and many others have developed a way of "unpacking" or analysing the right to health with a view to making it easier to understand and apply in practice to health-related policies, programmes and projects. For his part, the Special Rapporteur has tried to apply and refine this analytical framework in his country and other reports.[35] Importantly, however, the framework has general application to all aspects of the right to the highest attainable standard of health, including the underlying determinants of health, such as safe water and adequate sanitation.

71. While the analytical framework is discussed in detail elsewhere,[36] its key elements may be very briefly summarized as follows:

(a) Identification of the relevant national and international human rights laws, norms and standards;

(b) Recognition that the right to health is subject to resource constraints and progressive realization, requiring the identification of indicators and benchmarks to measure progress (or the lack of it) over time;

(c) Nonetheless, recognition that the right to health imposes some obligations that are subject to neither resource constraints nor progressive realization, but are of immediate effect, for example, the obligation to avoid discrimination;

(d) Recognition that the right to health includes freedoms (for example, freedom from discriminatory access to water) and entitlements (such as the provision of minimum essential levels of water and sanitation). For the most part, freedoms do not have budgetary implications, while entitlements do;

(e) All health services, goods and facilities shall be available, accessible, acceptable and of good quality (this scheme is briefly applied to water and sanitation in the context of the right to health in paras. 73 to 76 below);

(f) States have duties to respect, protect and fulfil the right to the highest attainable standard of health (this, too, will be briefly applied to water and sanitation in the context of the right to health in paras. 82 and 83 below);

(g) Because of their crucial importance, the analytical framework demands that special attention be given to issues of non-discrimination, equality and vulnerability;

(h) The right to health requires that there be an opportunity for the active and informed participation of individuals and communities in decision-making that has a bearing on their health;

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[34] See UNDP, *Human Development Report 2006*.

[35] For example, see A/61/338; see also E/CN.4/2006/48/Add.2.

[36] See E/CN.4/2005/51.

(i) Developing countries have a responsibility to seek international assistance and cooperation, while developed States have some responsibilities towards the realization of the right to health in developing countries;

(j) The right to health requires that there be effective, transparent and accessible monitoring and accountability mechanisms available at the national and international levels.

72. By way of illustration, the present section will briefly apply elements of this framework to water and sanitation in the context of the right to health.

Responsibilities of States

Available, accessible, acceptable and quality

73. The right to health requires a State to do all it can to ensure safe water and adequate sanitation is available to everyone in its jurisdiction. The quantity of water available for each person should correspond to the quantity specified by WHO.[37] Some individuals and groups may require additional water owing to health, climate and work conditions, and the State should therefore ensure that water is available in sufficient quantities to fulfil the needs of such groups and individuals. States should take measures against overconsumption and to ensure efficient water use. The right to health requires States to ensure that safe water is available for personal and domestic uses such as drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.[38]

74. In addition to being available, the right to health requires that water and sanitation also be accessible to everyone without discrimination. In the context of water and sanitation, access has four dimensions:

(a) Water and sanitation must be within safe physical reach for all sections of the population, in all parts of the country. Water and sanitation therefore should be physically accessible within, or in the immediate vicinity of, the household, educational institution, workplace and health or other institution.[39] The inaccessibility of water within safe physical reach can seriously impair health, especially of women and children responsible for carrying water. Carrying heavy water containers for long distances can cause fatigue, pain and spinal and pelvic injuries, which may lead to problems during pregnancy and childbirth. Similarly, the absence of safe, private sanitation facilities subjects women to a humiliating, stressful and uncomfortable daily routine that can damage their health.[40] When designing water and sanitation facilities for refugee camps and those for internally displaced persons, special attention should be given to prevent gender-based violence. For example, facilities should be provided in safe areas near dwellings;[41]

(b) Water and sanitation must be economically accessible (that is, affordable), including to those living in poverty. Poverty is associated with inequitable access to health services, safe water and sanitation. If those living in

[37] See G. Howard and J. Bartram, *Domestic Water Quantity, Service Level and Health* (WHO, 2002).

[38] E/2003/22-E/C.12/2002/13, annex IV, general comment 15, para. 12 (a).

[39] E/CN.4/Sub.2/2005/25, guideline 1.3.

[40] See United Nations Millennium Project Task Force on Water and Sanitation, *Health, Dignity and Development: What Will it Take?* (2005).

[41] See UNHCR, *Access to Water in Refugee Situations* (2005).

poverty are not enjoying access to safe water and adequate sanitation, the State has a duty to take reasonable measures that ensure access to all;

(c) Water and sanitation must be accessible to all without discrimination on any of the prohibited grounds, such as sex, race, ethnicity, disability and socio-economic status;

(d) Reliable information about water and sanitation must be accessible to all so that they can make well-informed decisions.

75. As well as being available and accessible, the right to health requires that water and sanitation facilities be respectful of gender and life-cycle requirements and be culturally acceptable. For example, measures should ensure that sanitation facilities are mindful of the privacy of women, men and children.

76. The right to health requires that water services and sanitation facilities be of good quality. Water required for personal and domestic use should be safe and free from micro-organisms, chemical substances and radiological hazards which constitute a threat to a person's health.[42] States should establish water quality regulations and standards on the basis of the WHO Guidelines for drinking water quality.[43] Similarly, sanitation facilities should be of adequate quality. Each person should have affordable access to sanitation services, facilities and installations that are adequate for the promotion and protection of human health and dignity. Good health requires the protection of the environment from human waste; this can only be achieved if everyone has access to, and utilizes, adequate sanitation.[44] Good quality water and sanitation reduce susceptibility to anaemia and other conditions that cause maternal and infant mortality and morbidity.

Combating discrimination, inequality and vulnerability

77. Arising out of the concepts of non-discrimination and equality, international human rights law has a preoccupation with vulnerability and disadvantage. This requires a State to take measures in favour of disadvantaged communities and individuals. In the present context, non-discrimination and equality have numerous implications. For example, they require a State to establish a national water and sanitation policy that is mindful of national and local health priorities and includes policies and programmes that address the needs of the disadvantaged. Non-discrimination and equality also require a State to give attention to individuals and groups who have special water and sanitation needs owing to health, climate or other conditions.

78. The right to health therefore requires a State to design a national water and sanitation policy aimed at ensuring equitable access for vulnerable and disadvantaged individuals and groups, including women and children, ethnic minority and indigenous populations, persons living in poverty, persons living with HIV/AIDS, internally displaced persons, the elderly, persons with disabilities, prisoners and others.

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[42] E/2003/22-E/C.12/2002/13, annex IV, general comment 15, para. 12 (b).

[43] WHO, "Guidelines for drinking water quality" (2006).

[44] See E/CN.4/Sub.2/2004/20, para. 44.

Progressive realization and the obligations of immediate effect

79. The right to the highest attainable standard of health — and thus the underlying determinants of health, such as safe water and adequate sanitation — are subject to progressive realization and resource availability, in accordance with article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights. Put simply, progressive realization means that a State is required to be doing better in two years time than it is doing today, while resource availability means that what is required of a developed State is of a higher standard than what is required of a developing State.

80. This has a number of important implications. For example, States need appropriate indicators and benchmarks so they know whether or not they are progressively realizing the right to health (see human rights-based approach to health indicators set out in document E/CN.4/2006/48). But it also has an important qualification: the right to health includes some core obligations of immediate effect that are not subject to progressive realization.[45] These are obligations without which it is considered that the right would be deprived of its raison d'être.[46] Under the right to health, for example, States have an immediate obligation to avoid discrimination and ensure access to basic sanitation,[47] as well as the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease.[48]

81. In summary, while the State is required to progressively realize access to water and sanitation, it has a core obligation of immediate effect to make available and accessible the minimum essential amount of water that is sufficient and safe for personal and domestic uses, and basic sanitation,[49] throughout its jurisdiction. Retrogressive measures, which reduce people's access to water and sanitation, are only allowed when a State is able to demonstrate that such measures have been adopted after full consideration of alternatives and are "duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources".[50]

Duties to respect, protect and fulfil

82. States have duties to respect, protect and fulfil the right to the highest attainable standard of health. These duties are equally applicable to medical care and the underlying determinants of health. For example, in the context of the underlying determinants of safe water and adequate sanitation, the duty to respect obliges the State to refrain from polluting water or arbitrarily interfering with a person's access to water and sanitation. The duty to protect obliges the State to take

[45] E/2001/22-E/C.12/2000/21, annex IV, general comment 14, para. 43.

[46] E/1991/23-E/C.12/1990/8 and Corr.1, annex III, general comment 3, para. 10.

[47] E/2001/22-E/C.12/2000/21, annex IV, general comment 14, para. 36.

[48] There is a difference between the water core obligation in general comment 14, para. 36 and general comment 15, para. 37 (a). Here, the more modest of the two is used, i.e. general comment 15, para. 37 (a).

[49] Basic sanitation is defined by the United Nations Task Force on Water and Sanitation as "the lowest-cost option for securing sustainable access to safe, hygienic and convenient facilities and services for excreta and sullage disposal that provide privacy and dignity, while at the same time ensuring a clean and healthful living environment both at home and in the neighbourhood of users".

[50] E/2001/22-E/C.12/2000/21, annex IV, general comment 14, para. 32.

effective measures to stop third parties from interfering with access to water and sanitation. For example, a State must take effective steps to ensure that private service providers do not compromise access to safe water and adequate sanitation. The duty to fulfil requires a State to provide those living in poverty with the minimum essential amount of water and basic sanitation if they would otherwise be unable to access them.

83. In other words, whether the supply of water and sanitation facilities is entrusted to a public or a private company, a State remains responsible for the proper regulation of its water and sanitation systems, as well as for the health and well-being of the most disadvantaged in its jurisdiction.

Participation

84. The active and informed participation of individuals and communities in health policymaking that affects them is an important feature of the right to the highest attainable standard of health. The right requires that special efforts be made to ensure the participation of individuals and groups that have traditionally been excluded or marginalized. For instance, in the context of water and sanitation, even though women bear a disproportionate burden in the collection of water and disposal of family wastewater, they are often excluded from relevant decision-making processes. States should therefore take measures to ensure that women are not excluded from decision-making processes concerning water and sanitation management.

85. In most cases, communities and groups have a better sense of the kind of water and sanitation services they require and how those services should be managed. Therefore, when formulating its national water and sanitation policy and programmes, a State should take steps to ensure the active and informed participation of all those likely to be affected.

International assistance and cooperation

86. States have the obligation to take steps individually and through international assistance and cooperation towards the full realization of various rights, including the right to health. Depending upon the availability of resources, developed countries should provide financial and technical assistance to supplement the resources of developing countries with a view to ensuring that everyone has access, as promptly as possible, to safe water and adequate sanitation.

87. Given the massive public health challenge posed by the inadequacy of water and sanitation facilities in the developing world, the Special Rapporteur reminds States of the commitments made under the Millennium Declaration and the World Summit on Sustainable Development and emphasizes the need for a global partnership on water and sanitation, aimed at establishing an effective, integrated water and sanitation supply system delivering quality affordable water and sanitation for all.

Monitoring and accountability

88. The right to health brings with it the crucial requirement of accessible, transparent and effective mechanisms of monitoring and accountability. Those with right-to-health responsibilities must be held to account in relation to the discharge of

their duties, with a view to identifying successes and difficulties; so far as necessary, policy and other adjustments can then be made. There are many different forms of monitoring and accountability mechanisms: judicial, quasi-judicial, administrative and political. While a State will decide which are most appropriate in its particular case, all mechanisms must be effective, accessible and transparent.

89. A national water and sanitation policy must be subject to appropriate monitoring and accountability. This requires that the policy set out the Government's right-to-health obligations in relation to water and sanitation, as well as an implementation plan that identifies objectives, timelines, duty holders and their responsibilities, indicators, benchmarks and reporting procedures. From time to time, a suitable national body (such as a health ombudsperson or a water and sanitation regulator) will have to consider the degree to which those responsible for the implementation of the national water and sanitation policy have fulfilled their duties — not necessarily with a view to sanction and punishment, but with a view to establishing which policies and institutions are working and which are not, with the aim of enhancing access to water and sanitation for all.

Some key issues

90. Ensuring access to water and sanitation for all gives rise to a wide range of specific, practical and important issues. By way of illustration, the present section briefly introduces some of these issues, keeping in mind the analytical framework signalled in preceding paragraphs.

Water privatization

91. In some quarters, privatization has been promoted as a way of responding to the global water crisis and ensuring access to all. However, experience shows that privatization may lead to price increases that do not take into account the ability of lower-income consumers to pay. For example, it is estimated that, after privatization, residents of Cochabamba in Bolivia were spending more than 25 per cent of their average household income on water, leading to violent protests in early 2000.[51] Similarly, privatization in the Philippines led to a 60 to 65 per cent increase in water tariffs, which meant that many people could not afford to pay them.[52]

92. The high cost of water may force households to use alternative sources of water of poorer quality that are a greater risk to health. Furthermore, the high cost of water may reduce the volume of water used by households to such an extent that hygiene and health are compromised.[53]

93. While international human rights law does not demand a particular form of service delivery or pricing policy, States must ensure that private water and sanitation providers do not compromise access to affordable, physically accessible water and sanitation.[54] Whether the supply of water and sanitation facilities is

[51] G. Dalton, *Private Sector Finance for Water Sector Infrastructure: What Does Cochabamba Tell Us About Using This Instrument, Occasional Paper*, No. 37 (University of London School of Oriental and African Studies, 2001).

[52] Marites Sison, "Philippines: awash in water bills after privatization", Inter Press Service, 22 January 2003.

[53] See WHO, loc. cit.

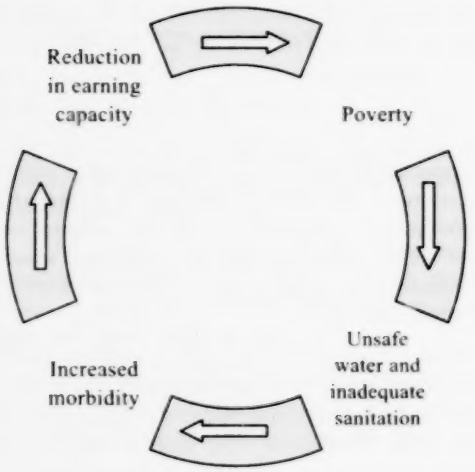
[54] See E/CN.4/2004/49/Add.1, para. 11.

entrusted to a public or private company, the State has an obligation to put an effective regulatory system in place to ensure, inter alia, that those living in poverty receive a minimum supply of drinking water and basic sanitation.[55]

Three key obstacles

1. *Poverty*

94. The poor and other marginalized groups have the greatest difficulty in gaining access to safe water and adequate sanitation. Many poor people living in slums, informal settlements and rural communities have no water connection, so they use water from unsafe sources and have inadequate sanitation, resulting in increased levels of morbidity and mortality.



95. An increase in morbidity leads to a reduction in earning capacity, creating a vicious cycle of poverty and ill health that is devastating among the poorest (see figure above). Poverty renders women and men ill-equipped to protect themselves and their children from diseases or to seek treatment for illness. Poor health and an impaired ability to work, compounded by high health costs, deepens poverty.

96. Enhancing access to safe water and adequate sanitation is not only critical to reducing morbidity and mortality; it is also a vital strategy in the struggle against poverty.

2. *Gender inequality*

97. The relationship between poverty and gender inequality is well known. The traditional roles and tasks assigned to women, such as securing water for household needs, caring for children, the elderly and ill, mean that women are often unable to attend educational institutions and are denied labour opportunities, which may lead to impoverishment and poor health. In some societies, women are further burdened with the task of disposing of the family's wastewater and faeces, exposing them to

[55] E/2003/22-E/C.12/2002/13, general comment 15, para. 24.

severe health hazards. Thus, women are hit hardest by the inadequate availability of water and sanitation services.

98. The water and sanitation needs of women are different from those of men. For example, women tend to place a higher value on household toilets than men, yet women are often absent from decision-making and priority-setting processes. The result is that the distinctive water and sanitation needs of women and girls (for example during menstruation and during and after pregnancy) are often neglected in discussions about sanitation and hygiene.

99. Inadequate water supply and sanitation services severely prejudices the health, productivity, income-generating capacity, physical security and dignity of women living in poverty. The Special Rapporteur emphasizes the need to ensure women's participation in decision-making and priority-setting processes, and urges States to adopt a gender-sensitive approach in all relevant policymaking. Moreover, involving women in decision-making will lead to positive health benefits for the entire community.

3. Global warming

100. Those living in poverty are disproportionately affected by the adverse effects of global warming. Not only has global warming led to a decline in dependable access to water, it has also led to a disruption in natural ecosystems. Warmer and wetter conditions resulting from climate change are increasing the range and season of vectors, such as mosquitoes and tsetse flies, which spread diseases such as malaria, dengue and yellow fever, and encephalitis.[56]

101. Global warming will adversely affect the world's hydrological cycle and result in more droughts and floods. Drought poses serious threats to health.[57] As clean water sources evaporate, people resort to more polluted alternatives that may lead to epidemics of water-borne diseases. Likewise, floods not only increase the risk of drowning and destroying crops, they also spread disease by extending the range of vectors and by washing agricultural pollutants into drinking water supplies.[57]

102. Despite these disturbing trends, the international community has not yet confronted the health threats posed by global warming. The failure of the international community to take the health impact of global warming seriously will endanger the lives of millions of people across the world.

V. Conclusions and Recommendations

103. **The conclusions and recommendations set out below focus on section IV.**

104. **The right to the highest attainable standard of health not only encompasses medical care but also underlying determinants of health, such as safe water, adequate sanitation, healthy occupational and environmental conditions, and freedom from discrimination. Too often, a disproportionate amount of attention is devoted to medical care, at the expense of the underlying determinants of health.**

[56] McMichael and others, "Climate change and human health" (WHO/UNEP/WMO, 2003).

[57] New Economics Foundation, *The End of Development* (2006).

105. **While the present report gives particular attention to water and sanitation, it must be understood that the right to health encompasses numerous other underlying determinants. The analytical framework set out in the report can be applied to other underlying determinants of health.**

106. **Although fundamental to survival, development, economic growth and the right to health, water and sanitation are frequently neglected. Many States devote inadequate budgetary resources to water and sanitation and fail to develop adequate plans, policies, programmes and laws. Historically, international organizations have neglected water and sanitation, although WHO and OHCHR are both taking important strides towards redressing this imbalance. Also, donors have inadequately supported safe water and adequate sanitation initiatives, although there are some signs that this is beginning to change. Civil society organizations have made commendable progress in advancing debates on issues of water, sanitation and human rights.**[58]

107. **In order to redress this neglect, the Special Rapporteur makes the following recommendations:**

(a) ***Formal recognition.*** **All States should formally recognize that the right to the highest attainable standard of health includes access to safe water and adequate sanitation;**

(b) ***Laws, plans, policies, programmes and projects.*** **By way of participatory processes, States should formulate and implement laws, plans, policies, programmes and projects that enhance access to safe water and adequate sanitation for all;**

(c) ***National budgets and international assistance.*** **The vital importance of safe water and adequate sanitation to health — and the right to health — must be reflected in national budgets and international assistance and cooperation;**

(d) ***Disadvantaged groups and individuals.*** **Consistent with international human rights law, measures (both national and international) to enhance access to safe water and adequate sanitation must give particular attention to disadvantaged groups and individuals, such as the poor, as well as those living in rural communities and urban informal settlements, irrespective of their tenure status;**

(e) ***Gender.*** **In the context of water, sanitation and the right to health, it is extremely important that States, international organizations and others adopt a gender-sensitive approach to all relevant policymaking;**

(f) ***An integrated approach.*** **The right to the highest attainable standard of health requires an integrated approach whereby adequate sanitation and hygiene are included in water supply programmes;**

(g) ***Public information campaigns.*** **Large-scale public awareness health campaigns are needed to provide information relating to water and sanitation, for example on hygiene, safe water storage and monitoring water quality. This**

[58] See, for example, the Right to Water Programme, Centre for Housing Rights and Evictions (www.cohre.org); Water Law Research Programme (www.telrc.org); and Water Aid (www.wateraid.org).

is particularly important for low-income households that rely on small-scale water and sanitation facilities;

(h) *International Year of Sanitation (2008).* The General Assembly recently declared 2008 the International Year of Sanitation to raise awareness about the importance of sanitation.[59] The Special Rapporteur urges States to seize this opportunity to take joint and concerted efforts towards the realization of the Millennium Development Goal water and sanitation target;

(i) *Monitoring and accountability.* One of the most important steps which many States need to take towards realization of the right to health generally, and access to water and sanitation in particular, is to establish an effective, transparent and accessible monitoring and accountability mechanism. This may be, for example, a national human rights institution, health ombudsperson or water and sanitation regulator. The mechanism should have the responsibility to monitor and hold all relevant public and private actors to account, in relation to the national water and sanitation policy, as well as access to water and sanitation for all;

(j) *Climate change.* The Special Rapporteur calls on the Human Rights Council to urgently study the impact of climate change on human rights generally and the right to the highest attainable standard of health in particular;

(k) *The human right to water and sanitation.* To its credit, the Human Rights Council has begun to study the issue of human rights and access to water.[60] It is recommended that the Council appoint a special rapporteur on the right to water and sanitation to assist States understand their legal obligations, identify and disseminate best practices and monitor the progressive realization of this important human right. For their part, all States should recognize the human right to water and sanitation.

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[59] General Assembly resolution 61/192.

[60] See A/HRC/L.3/Rev.3.

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Implementation of the mobility policy

Report of the Secretary-General

Summary

The present report is submitted in response for the request of the General Assembly in its resolution 61/244 for the Secretary-General to report on indicators, benchmarks, number of staff, timelines and criteria for the implementation of mobility policies, taking into account the needs of the Organization and ways to protect the rights of staff in the context of the system of administration of justice.

* A/62/150.

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I. Introduction

1. The 2005 World Summit Outcome (General Assembly resolution 60/1) reaffirmed the role of the Secretary-General as the chief administrative officer of the Organization, and requested him to make proposals to the Assembly on the conditions and measures necessary for him to carry out his managerial responsibilities effectively. The proposals of the Secretary-General were initially presented in his report entitled "Investing in the United Nations: for a stronger Organization worldwide" (A/60/692 and Corr.1). The details of the proposed new human resources framework were elaborated upon in the report of the Secretary-General entitled "Investing in people" (A/61/255 and Add.1 and Add.1/Corr.1), following consultations with managers, staff (including in the Staff Management Coordination Committee (SMCC)) and the United Nations funds and programmes and in the context of the inter-agency Human Resources Network.

2. One of the components of the new framework for human resources is the proposal of the Secretary-General for an integrated approach to mobility, envisaged as a way to improve the effectiveness of the Organization and to foster the skills and capacity of staff.

3. The proposals of the Secretary-General were reviewed by the General Assembly at its sixty-first session. In its resolution 61/244, the Assembly encouraged the Secretary-General to continue to make progress in the field of mobility. In recognition of the increased workload resulting from the managed mobility programme, the Assembly approved additional resources. Noting the current work on mobility policies, which includes the implementation of a managed reassignment programme, the General Assembly requested the Secretary-General to submit a report on the issue at its sixty-second session (resolution 61/244, sect. IV, paras. 4 and 5). The present report is submitted in response to that request.

4. The Assembly also requested the Secretary-General to submit, at its sixty-third session, a report on the implementation of managed mobility with an assessment and analysis of the relevant issues, including the enforcement of post occupancy limits and financial implications.

II. Background

5. In the past 20 years, the Organization has experienced a dramatic expansion of operations, budgets and functions. In addition to its parliamentarian responsibilities, the Secretariat today directly manages complex, billion-dollar operations and delivers critical services around the world. In so doing, it works with a wide range of partners — including national Governments, regional organizations, civil society, philanthropic foundations and private sector companies — on a broad range of activities, from humanitarian activities, to peacekeeping, peacebuilding, human rights issues, the work of international tribunals, drugs and crime control and other activities that have a direct impact on the lives of hundreds and millions of people every day.

6. This new reality of the United Nations requires a workforce capable of fulfilling both the standing requirements of headquarters programmes and the mandates of field activities. The mobility of staff is essential in order to create such a workforce. Systematic mobility also helps the Organization to:

(a) Increase its flexibility and responsiveness, including the ability to meet rapid deployment requirements, by preparing staff to operate in a multidisciplinary environment;

(b) Improve programme delivery capacity, by addressing chronic vacancy challenges;

(c) Offer increased staff development and career advancement opportunities;

(d) Develop a more comprehensive understanding of, and therefore ability to address, the many facets of the Organization's work programme, through greater integration.

7. The need to increase staff mobility and to approach it in a more systematic manner has become an integral part of the Secretariat's human resources strategy since the early 1990s. In its resolution 49/222, the General Assembly noted that the human resources strategy of the Secretary-General called for mobility on the part of all new internationally recruited staff, and urged the Secretary-General to apply the mobility elements of the new strategy to internationally recruited staff. Later, in resolution 51/226, the Assembly requested the Secretary-General to pursue "the development and implementation of the managed reassignment programmes for entry-level and other staff" (sect. III, part D, para. 6) and reiterated the importance of making substantive progress towards increased mobility (sect. III, part D, para. 7).

8. General Assembly resolution 53/221 emphasized "the requirement of mobility of all internationally recruited staff of the Organization as an integral part of their obligation", and requested the Secretary-General to "give full consideration to the need for greater mobility in the context of human resources planning, in accordance with staff regulation 1.2 (c)" (sect. III, para. 7). In the same resolution, the General Assembly requested the Secretary-General to "establish mechanisms towards, and to implement a policy of, enhanced mobility across functions, departments and duty stations" (sect. III, para. 8).

9. In response, the Secretary-General explained in his report A/55/253 and Corr.1 how he envisaged implementing his mobility policy, which included the introduction of time limits for post occupancy. The details of the policy were provided in annex III to that report. After the adoption of General Assembly resolution 55/258, the mobility policy was more fully developed and integrated into the new staff selection system, which came into effect on 1 May 2002 (see ST/SGB/2002/5 and ST/AI/2002/4). In subsequent resolutions on human resources management (resolutions 57/305, sect. II, paras. 47-53, and 59/266, sect. VIII), the Assembly expressed a number of requirements that should be observed in the implementation of the mobility policy. Those requirements have been incorporated into the policy currently in place.

10. An extensive consultative process has been conducted from the inception of the policy, through its formal introduction, to its current status. Mobility has been discussed in SMCC since 1999. SMCC agreed that mobility should be viewed in its broadest sense, with mobility requirements being fulfilled by movement among functions, departments, occupations, duty stations and organizations beyond the Secretariat. This statement has become the basis for the definition of mobility used by the Organization in its current policy.

11. Mobility continues to be discussed in staff-management consultations in SMCC. Most recently, it was agreed in SMCC in June 2007 that a working group comprising staff and management would be established to monitor the implementation of the mobility policy.

III. Mobility policy

12. The mobility policy was introduced as an integral part of the staff selection system (see ST/SGB/2002/5, ST/AI/2002/4, ST/AI/2005/8, ST/AI/2006/3 and ST/AI/2007/2) to support, inter alia, the development of a more versatile, multi-skilled and experienced international civil service and the promotion of greater integration among staff throughout the Secretariat.

13. The main principles guiding the policy are as follows:

(a) Mobility is not an end in itself, but a tool to enable the United Nations to fulfil its operational requirements more effectively;

(b) Mobility patterns vary depending on the requirements of the job and the location;

(c) Mobility is a shared responsibility between the Organization, managers and staff, in which all must play an active role;

(d) Mobility will be integral to career patterns: career progression will depend, in part, on evidence of mobility.

14. The mobility policy reflects the scope and nature of the work of the Organization, which significantly differ from the other international organizations included in the common system. The number of international Professional staff is large and the sizes of locations where they serve differ. There are at least 23 occupational groups, not all of which are replicated in all duty stations. Some of the Professional staff are highly specialized and based only in certain locations. These factors make the administration of mobility complex and substantially different from the situation prevailing in the United Nations funds and programmes and make straightforward rotation unfeasible.

15. Mobility is therefore defined in its broadest sense. It includes movement within and between departments, functions, occupational groups, duty stations and organizations of the United Nations system. A movement to a different position can be at the same level, which is considered to be a lateral move, or to a higher level. The new position may be in the same or a different department or office, in the same or a different duty station or in the same or a different occupational group.

16. The mobility policy was formally established in May 2002 when the limits on post occupancy (five years up to the P-5 level and six years above the P-5 level) were introduced. The post occupancy period starts anew each time the staff member moves as a result of selection under the staff selection system, within a managed reassignment programme, or as a lateral move to a post with different functions.

17. The policy links mobility to career development, requiring two lateral moves before promotion to the P-5 level. It also includes incentives to encourage movement to duty stations with high vacancy rates by permitting staff who have

served in Nairobi or in a regional commission other than the Economic Commission for Europe more rapid career progression.

18. Mobility for the staff at the P-2 level has been managed since 2000. Such staff are subject to a managed reassignment programme during the first five years of service in the Organization. The purpose of this programme is to provide junior Professional staff with enhanced orientation, training, mobility and career support during their first five years of service at the Professional level, in order to facilitate their adjustment and to accelerate the learning period leading to productive work and job satisfaction as international civil servants.

IV. Implementation of the mobility policy

19. During the five-year period since 2002, there have been systematic efforts to introduce the concept of mobility and create programmes and mechanisms to prepare and support staff. Achievements and activities in that respect have been reported in detail in the latest reports of the Secretary-General on human resources management reform (A/61/228 and Corr.1 and A/61/255 and Add.1 and Add.1/Corr.1).

20. The main aspects of these preparations include a communication strategy, expanded learning and training opportunities and greater focus on work-life issues.

A. Communication strategy

21. After the promulgation of administrative instruction ST/AI/2002/4, which institutionalized managed mobility and introduced post occupancy limits for all posts from the G-5 to D-2 level, a communication campaign was undertaken to familiarize staff globally with the new staff selection system.

22. In 2005, a global information campaign was launched to continue to build awareness among the staff at large of the mobility policy and inform staff of the support available to help them to prepare for mobility. Printed and electronic materials containing answers to frequently asked questions as well as suggestions on preparing for mobility were made widely available on i-Seek. In addition, a dedicated website was launched, and continues to be maintained, to provide staff with up-to-date information on mobility.

23. Additional information on mobility was also provided during the reform outreach in 2006, when reform teams visited 31 duty stations and met with some 5,000 staff members to provide an opportunity to discuss all aspects of reform, including mobility.

24. In 2007, targeted information-sharing campaigns were conducted for staff members who were reaching their post occupancy limits beginning in May 2007. This included both group and one-to-one meetings to ensure understanding of the programme and the support mechanisms available to staff and managers.

B. Training, learning and career support

25. In order to ensure that staff are prepared for mobility, a number of initiatives have been taken to support staff, including: (a) expanded staff development and career support programmes; (b) the establishment of career resource centres in all major duty stations; (c) a revised electronic performance appraisal system (e-PAS), which includes a career development goal, a learning goal and expression of interest in mission assignment; and (d) the issuance, online, of generic job profiles covering the majority of Professional and General Service posts (G-5 and higher), to clarify job expectations.

1. Expanded staff development and career support programmes

26. A new and enhanced staff development programme was launched Secretariat-wide, including special career development workshops, to provide staff with new skills and competencies, promote culture change and create awareness of the benefits of mobility. Some of the workshops offered are:

(a) The road ahead: navigating your career;

(b) Designing your own career road map;

(c) Preparing staff for career development and mobility: a workshop for managers;

(d) Career connections;

(e) Career plateaux;

(f) Job interviewing for applicants;

(g) Preparing written applications;

(h) Reputation management;

(i) Mobility readiness;

(j) Junior Professional orientation;

(k) Language and communication programmes.

2. Establishment of career resource centres in all major duty stations

27. The career resource centre, a component of the United Nations Secretariat career development system, is a resource for staff and managers offering career planning and development information, mobility support, learning opportunities and career counselling. It is a resource to ensure the continuous professional growth of both Professional and General Service staff members.

28. Over 5,200 staff members have used the career resource centre at United Nations Headquarters since its opening in September 2002 for workshops and individual consultations. By 2005, career resource centres had been established for staff at all offices away from headquarters and regional commissions. In 2006, over 1,500 staff members used the services of the centre in New York, while over 1,400 staff members used the centres in other duty stations.

29. The career resource centres offer staff members and managers opportunities to develop skills, knowledge and competencies required to promote career

development and meet the mobility requirements. Staff can utilize services including written, video and web-based materials and individual career counselling. The centres also provide workshops on topics such as career change, networking, preparing job applications (personal history profile), competency-based interviews and reputation management.

3. Electronic performance appraisal system

30. The e-PAS strengthens the link to career development by encouraging dialogue between staff members and supervisors on their career aspirations and competencies needed for future assignments. It also includes an opportunity for staff members to indicate their interest in going on a field mission.

4. Generic job profiles

31. Generic job profiles were developed in 2002 to streamline the classification process and to facilitate the first stage of the staffing process by reducing the amount of time spent in drafting and classifying unique job descriptions prior to the circulation of posts. The use of these profiles has contributed to greater standardization, efficiency, speed and transparency in creating vacancy announcements and clarifying job expectations. The generic job profiles are also continually reviewed to ensure that their content is current.

C. Work-life issues

32. One of the critical obstacles to mobility is the serious difficulty faced by dual-career families. The Organization has made efforts to examine and address work and life issues. Links have been established with associations that provide assistance in this respect. The United Nations has also participated in an inter-agency project sponsored by the United Nations Development Group to establish expatriate spouse-support networks at field duty stations. In addition, the General Assembly, in its resolution 61/244, invited host countries to review, as appropriate, their policies for granting work permits for spouses of United Nations staff.

33. The Organization continues to address work-life issues that impede mobility and are a barrier to achieving gender parity, in particular concerns affecting staff with family responsibilities, including by:

(a) Making every effort, when determining the timing of a geographical reassignment, to minimize the disruption of work in the duty station involved and to facilitate linkages with leave and school calendar requirements and the needs of staff with children with special needs;

(b) Giving priority consideration to staff who have served in hardship or non-family duty stations for headquarters or family duty station postings. The preferences expressed by staff members serving in hardship duty stations (C to E classifications) would be given greater weight than those of other staff members when they apply to positions included in the mobility compendium;

(c) Expanding possibilities for dual-career couples, for example by providing career counselling and job search assistance; exploring telecommuting options for spouses; and giving priority consideration to spouses for consulting opportunities, where appropriate;

(d) Within the managed reassignment programme, the Office of Human Resources Management would, in cooperation with managers, give priority to relocation of spouses, subject to availability of suitable posts and satisfactory performance.

34. In recognition of the demands that mobility and relocations place on international Professional staff members and their families and the resulting disruption to personal lives, provisions have been put in place to take into account family and other special constraints, to the extent possible.

D. Maintaining institutional capacity

35. The mobility policy is being implemented in a gradual and phased manner in order to maintain continuity and quality of service and to preserve the institutional memory and capacity of the Organization. In order to ensure that increased mobility does not adversely affect institutional capacity, the Secretariat is actively supporting and developing knowledge management practices. Such practices are important not only in the context of the implementation of the mobility policy, but also because of anticipated high rates of retirement in the coming years.

36. Managers are responsible for putting in place systems that would support mobility, including introducing standard operating procedures to facilitate knowledge management and the preservation of institutional memory, and undertaking succession planning and cross-training to ensure that the institutional capacity to deliver is preserved.

37. Knowledge management initiatives have included rotating staff through different assignments to expand the knowledge base and broaden the shared institutional memory. Many departments have launched knowledge management initiatives, including cross-training staff and rotating them through different assignments in order to spread the knowledge base and share institutional memory more widely.

E. Human resources information technology

38. In order to ensure the effective implementation of the mobility policy, in particular the managed reassignment programme, extensive preparations took place to enhance organizational information technology tools and to ensure accuracy of records. A dedicated website has been designed to provide staff with up-to-date information on the latest developments, including policies and procedures, timelines and learning opportunities. In addition, staff can address their queries to a specific e-mail address to get answers from the mobility team in the Office of Human Resources Management.

39. The current information technology system has posed numerous challenges, including the accuracy of the records, all of which have had to be verified. As a first step, staff who were identified to be reaching their post occupancy limit were requested to complete an electronic fact sheet. This gave an opportunity for staff to rectify any inaccuracies, or to provide missing information in their records. This information was reviewed in cooperation with responsible officials and adjustments were made as necessary. It is anticipated that with the introduction of the

forthcoming new talent management system some of these technological challenges will be overcome.

V. Managed reassignment programme

40. One element of the mobility policy is managed reassignment. Staff members who have reached the maximum post occupancy limit are subject to managed reassignment. The managed reassignment programmes are being implemented level by level, in a gradual and phased manner.

A. Criteria for implementation

41. The criteria for implementation of the managed reassignment programme are set out in ST/AI/2007/2, which applies to staff appointed at the levels G-5 to D-2 for one year or longer under the 100 series of the staff rules who will have reached the maximum post occupancy limit by the time the managed reassignment programme relating to their levels is launched. The managed reassignment programmes under ST/AI/2007/2 do not apply to the following staff members:

(a) Mission staff whose appointment is limited to a particular field mission;

(b) Staff whose appointment is limited to a particular office or programme, as these staff members are subject to a separate managed reassignment programme within the office or programme concerned;

(c) Language staff, defined as including interpreters, translators, précis-writers, editors, verbatim reporters, proofreaders, copy preparers, revisers, terminologists, text processors, language reference assistants and editorial assistants who were appointed after passing a competitive examination for posts requiring special language skills. They will also be subject to a special managed reassignment programme applying to language staff serving at the main duty stations and in the regional commissions;

(d) Staff members in the General Service and related categories who perform the functions of tour guide, language teacher, security and trades and crafts;

(e) Staff members within three years of retirement.

42. The administrative instruction also provides for exemptions for a staff member to participate in a specific exercise. Such exemptions are reviewed on a case-by-case basis and may be granted for a number of reasons, including valid medical grounds or when the technical requirement of the post or its degree of specialization cannot be met by other staff participating in the managed reassignment exercise.

B. Timelines for implementation

43. The managed reassignment programme for staff at the P-3 and G-7 levels commenced in May 2007. Programmes for staff at other levels will take place over the next 18 months in a gradual, phased manner, level by level. Subsequently, further managed reassignment programmes will be initiated, taking into account

lessons learned in the course of implementation. Remaining phases of the managed reassignment programmes are scheduled to start as follows:

(a) November 2007: staff members at the P-4 and G-6 levels;

(b) May 2008: staff members at the P-5 and G-5 levels;

(c) November 2008: staff members at the D-1 and D-2 levels.

44. This gradual approach should assist in embedding mobility in the organizational culture and provide sufficient flexibility to adjust the policy as necessary.

C. Indicators, benchmarks and numbers of staff

45. The mobility of staff is critical to creating a more versatile, multi-skilled and experienced staff, capable of fulfilling the complex mandates of the Organization. An essential aspect of this policy is the commitment to continuous learning and its link to career development. In order to be able to analyse the impact of the mobility policy in the future, to ensure that it is achieving its intended purpose, the current status will serve as baseline for future reviews.

46. In this context, a number of indicators and benchmarks have been identified to help the Organization assess the implementation of the mobility policy and to refine it, as part of a continuous process to seek to improve its practices. The indicators reflect staff mobility in general and include various types of movement, such as lateral moves, promotions and assignments. An additional indicator of staff movement will be that of staff moved though managed reassignment.

47. Mobility indicators from May 2002 until May 2007 reflect movement of staff prior to the expansion of the managed reassignment programme for staff other than at the P-2 level as shown below:

Mobility in 2002

Number of staff (December 2001)	**8 415**
Promotion	730
Reassignment within department/office	218
Transfer between departments/offices	90
Assignment other than a field mission	94
Assignment to a field mission	96
Inter-agency mobility	29

Mobility in 2006

Number of staff (December 2005)	**8 437**
Promotion	944
Reassignment within department/office	374
Transfer between departments/offices	277
Assignment other than a field mission	98
Assignment to a field mission	39
Inter-agency mobility	36

48. In May 2007, the first managed reassignment programme was initiated for staff at the P-3 and G-7 levels. The programmes for staff at other levels will be initiated in the course of 2007 and 2008. Therefore, in monitoring mobility indicators in the period 2007-2008, an indicator reflecting movements through the managed reassignment programme will be added.

49. The baseline data from 2002 to 2006, as well as in 2007-2008, will be used to evaluate the overall organizational performance, as well as that of individual departments and duty stations, in meeting the objectives of the mobility policy. In this context, the following areas will be benchmarked:

(a) Overall movement of staff in individual departments/offices;

(b) Overall movement of staff within a duty station;

(c) Movement of staff across duty stations;

(d) Inter-agency movement;

(e) Vacancies in duty stations with high vacancy rates;

(f) Participation in training and learning programmes.

D. Monitoring and protective measures

50. The managed reassignment programmes are implemented as flexibly as possible to take into account both the operational need of the Organization and the aspirations and personal or family circumstances of staff members. In order to ensure that the mobility policy is achieving its intended purpose, the policy will be monitored closely by the Office of Human Resources Management, with input sought from substantive departments as well as the staff. The policy will be reviewed at the end of the transitional period, in 2008.

51. Recognizing the necessity to ensure consistency in application of the criteria, taking into account the needs of the Organization and protection of the rights of staff, the managed reassignment programmes are centrally coordinated for all international staff. Programmes for staff in the General Service and related categories are implemented at respective duty stations, under the guidance of and with oversight by the Office of Human Resources Management. All requests for exemptions are reviewed and decided on by the Office.

52. Furthermore, as agreed in SMCC in June 2007, a working group comprising staff and management has been established to monitor the implementation of the mobility policy. In addition, staff members can avail themselves of the informal and formal mechanisms of the system of administration of justice should they consider administrative decisions to be incorrect.

VI. Conclusion

53. The overall aim of mobility is to contribute to the development of a versatile and multi-skilled workforce and to stimulate learning and development of skills. In this context, the mobility policy encourages staff movement, including by applying for posts under the staff selection system, through the managed reassignment programmes, in the context of opportunities for mission detail and other temporary assignments and for service with organizations of the common system.

54. This approach to mobility represents a significant change for staff and managers as, until now, staff movements were for the most part not systematically encouraged or centrally coordinated. It is recognized that, as with any organizational change in a large, complex environment, this new approach may give rise to concerns. These concerns will continue to be addressed through communication, training and counselling on a one-to-one basis when necessary. At the same time, it should be noted that many staff welcome the expanded opportunities that the mobility policy provides.

55. The Organization will refine the policies in the light of experience. The coming year will be an opportunity to assess and analyse how the policy is working and whether there are elements or aspects that need to be adjusted in order to meet the intended goals better. In this process, the Organization will continue to consult with all stakeholders, including staff, managers and Member States.

56. **The Secretary-General invites the General Assembly to take note of the present report.**